

Tolowa Nation (Petitioner #85) Proposed Finding

Summary under the Criteria and Evidence for the
Proposed Finding against Acknowledgment of the
Tolowa Nation (Petitioner #85)

Prepared in Response to a Petition
for Federal Acknowledgment as an Indian Tribe
Submitted to the Assistant Secretary-Indian Affairs

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(Date)


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Tolowa Nation (Petitioner #85) Proposed Finding

CONTENTS

ACRONYMS.....i

MAPS.....ii

 Map of Athabascan Villages and Sites in Del Norte County iii

 Map of Del Norte County, including Del Norte Athabascan Locations..... iv

INTRODUCTION 1

 Regulatory Procedures 2

 Administrative History 2

 Documents Received: Governing Document. 5

 Historical Background 1853-1906..... 5

 Issues Pertaining to Historical Indian Tribe 9

 Identification of Ancestors 13

 Membership Lists 13

 Membership Files 13

 Petitioner’s Claimed Ancestors 13

UNAMBIGUOUS PREVIOUS FEDERAL ACKNOWLEDGMENT (§ 83.8) 16

 Smith River/Klamath Reservations 17

 Smith River, Elk Valley, and Resighini Rancherias..... 17

 Del Norte Indian Welfare Association (DNIWA) 18

 Conclusion 18

SUMMARY UNDER THE CRITERIA 20

 Criterion 83.7(b) 20

 Introduction 20

 Evidence for years 1853-1868..... 20

 Evidence for years 1869-1902..... 22

 Evidence for years 1903-1933..... 24

 Evidence for years 1934-1949..... 27

 Evidence for years 1950-1982..... 31

 Evidence for years 1983-2010..... 36

 Conclusion..... 40

BIBLIOGRAPHY 43

Tolowa Nation (Petitioner #85) Proposed Finding

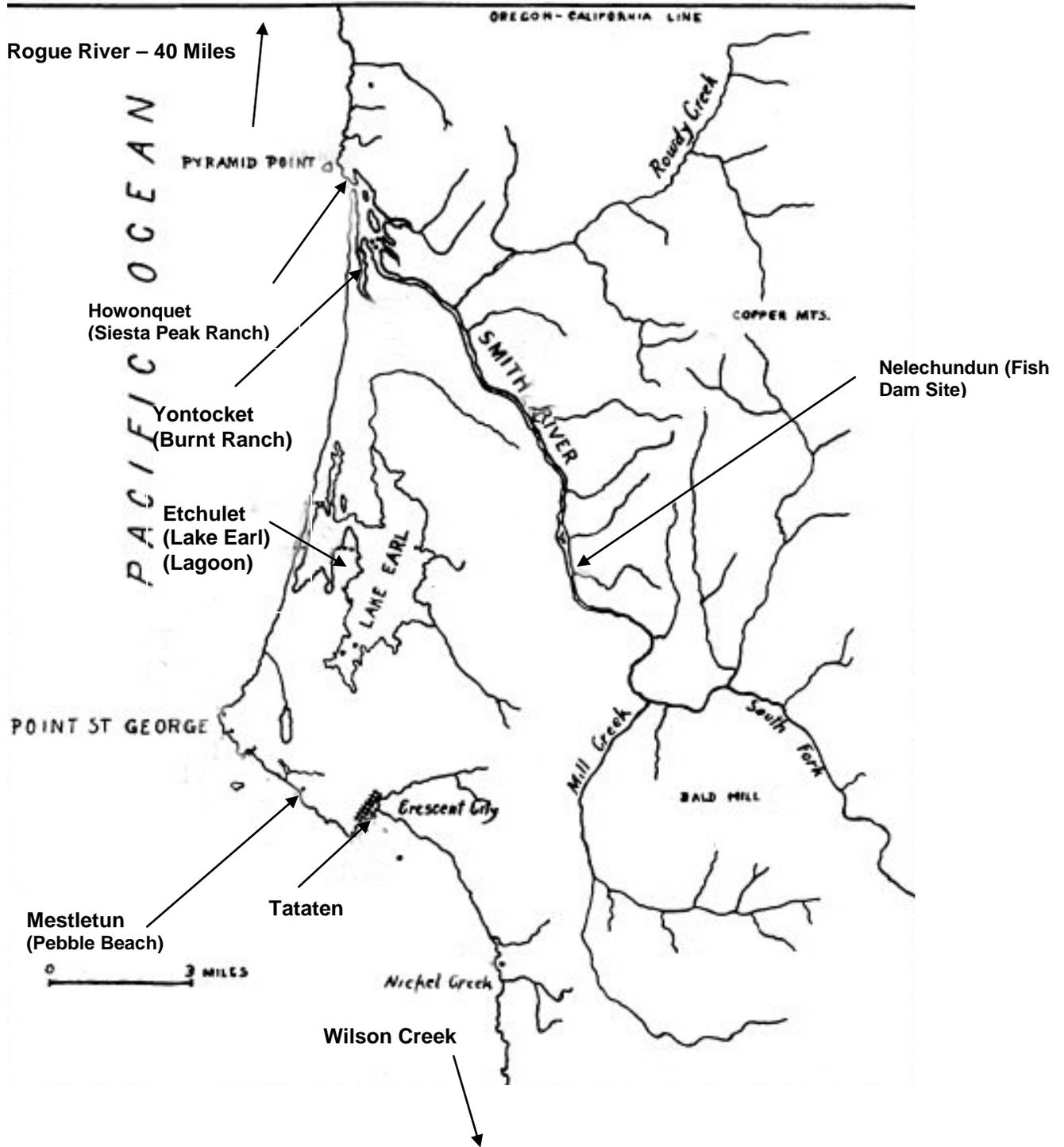
ACRONYMS

AS-IA	Assistant Secretary–Indian Affairs
BIA	Bureau of Indian Affairs
BAR	Branch of Acknowledgment and Research (Now OFA)
CA	California
CETA	Comprehensive Employment and Training Act
DNIWA	Del Norte Indian Welfare Association
FD	Final Determination
FR	<i>Federal Register</i>
GLO	General Land Office
IRA	Indian Reorganization Act
M	“Mixed” or “Mulatto”
NCAI	National Congress of American Indians
NCIDC	Northern California Indian Development Council
OD	Obvious Deficiency Letter
OFA	Office of Federal Acknowledgment
OR	Oregon
PF	Proposed Finding
TA	Technical Assistance [Review Letter]
TN	Tolowa Nation
W	White

Tolowa Nation (Petitioner #85) Proposed Finding

MAPS

Tolowa Nation (Petitioner #85) Proposed Finding



Map of Athabascan Villages and Sites in Del Norte County¹

¹Adopted from Waterman (1925, 529). Note the variations in spelling of the village names in the texts.

Tolowa Nation (Petitioner #85) Proposed Finding



Map of Del Norte County, including Del Norte Athabaskan Locations²

²Adopted from Crescent City *Hazard Mitigation Plan Volume 1: Planning-Area-Wide Elements* (2010, 32).

Tolowa Nation (Petitioner #85) Proposed Finding

Introduction

INTRODUCTION

The Office of the Assistant Secretary – Indian Affairs (AS-IA) within the Department of the Interior (Department) issues this proposed finding (PF) in response to the petition it received from the group known as the Tolowa Nation (Petitioner #85), with its headquarters in Fort Dick, California. Petitioner #85 seeks Federal acknowledgment as an Indian tribe under Part 83 of Title 25 of the *Code of Federal Regulations* (25 CFR Part 83), “Procedures for Establishing that an American Indian Group Exists as an Indian Tribe.”

The evidence submitted by Petitioner #85, and evidence Department staff obtained through its verification and evaluation research, is insufficient to demonstrate that Petitioner #85 meets the criterion 83.7(b), one of the seven mandatory criteria of the regulations for a determination that the petitioning group is an Indian tribe. Criterion 83.7(b) requires that “[a] predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present.” In accordance with the regulations, the failure to meet all seven criteria requires a determination that the petitioning group is not an Indian tribe within the meaning of Federal law (§ 83.6(d), § 83.10(m)). Therefore, the Department proposes to decline to acknowledge Petitioner #85 as an Indian tribe.

According to AS-IA *Office of Federal Acknowledgment; Guidance and Direction Regarding Internal Procedures* of May 23, 2008:

If during the evaluation of a petition on active consideration it becomes apparent that the petitioner fails on one criterion, or more, under the reasonable likelihood of the validity of the facts standard, OFA may prepare a proposed finding or final determination not to acknowledge the group on the failed criterion or criteria alone, setting forth the evidence, reasoning, and analyses that form the basis for the proposed decision. (73 FR 30147)

The burden of providing sufficient evidence under the criteria in the regulations rests with the petitioner, 25 CFR § 83.5(c). Because Petitioner #85 has not met criterion § 83.7(b) as a distinct community, it is not necessary for the Department to make conclusions regarding the other six mandatory criteria.

This proposed finding is based on the evidence currently in the record. Additional evidence may be submitted during the comment period that follows publication of this finding.

New evidence provided during the comment period may result in a modification or reversal of the conclusions reached in the proposed finding. As provided in the AS-IA guidance of May 23, 2008:

If a proposed finding against acknowledgment is issued on fewer than seven criteria and if, following an evaluation of the evidence and argument submitted during the comment period, it is determined that the petitioner meets the criterion or criteria, then the Assistant Secretary will issue an amended proposed finding evaluating all seven criteria. (73 FR 30147)

Tolowa Nation (Petitioner #85) Proposed Finding

Introduction

Regulatory Procedures

The acknowledgment regulations under 25 CFR Part 83 establish the procedures by which a group may seek Federal acknowledgment as an Indian tribe, establishing a government-to-government relationship with the United States. To be entitled to such a political relationship with the United States, the petitioner must submit evidence documenting that the group meets these seven criteria. Failure to meet any one of the mandatory criteria in § 83.7 will result in a determination that the group is not an Indian tribe within the meaning of Federal law. The Office of Federal Acknowledgment (OFA) within the Office of the AS-IA has responsibility for administering the regulations and analyzing petitions based on the evidence in the administrative record.

The time periods for the evaluation of documented petitions are set forth in the acknowledgment regulations in § 83.10. Publication of the notice of the PF in the *Federal Register* (FR) initiates a 180-day comment period during which the petitioner and interested and informed parties may submit arguments and evidence to support or rebut the conclusions reached in the PF. Such comments should be submitted in writing to the Office of the Assistant Secretary-Indian Affairs, 1951 Constitution Avenue, N.W., Mail Stop 34B-SIB, Washington, D.C. 20240, Attention: Office of Federal Acknowledgment. Interested and informed parties must provide copies of their submissions to the petitioner in order for them to be considered.

The regulations in § 83.10(k) provide petitioners a minimum of 60 days to respond to any comments on the PF submitted during the comment period. At the end of this response period for the PF, OFA will consult with the petitioner and interested parties to determine an equitable time frame for consideration of written arguments and evidence that are submitted during the comment and response periods. OFA will notify the petitioner and interested parties of the date such consideration begins.

After consideration, the AS-IA will issue either an amended proposed finding or a final determination (FD) regarding the petitioner's status. The Department will publish a notice of the decision in the FR.

Administrative History

On September 11, 1982, a group identifying itself as "The Tolowa-Tututni Tribe of Indians" submitted a resolution to the Department. The resolution was the group's "Petition for Federal acknowledgment of its Status as an Indian Tribe," and noted that, by a 9 to 0 vote, the "Tolowa-Tututni Provisional Tribal Council" had adopted this resolution on September 11, 1982. Two individuals, Sheryl Steinruck, Meeting Chair of the Provisional Council, and Joseph M. Giovanetti, Secretary, signed the resolution. It also identified Allogan Slagle as the petitioner's spokesperson and authorized the Nelechundun Business Council, Inc. to act on its behalf (Steinruck and Giovanetti 9/11/1982).

In support of the submission, the "Tolowa Recognition Project Provisional Council" submitted, on March 22, 1983, "Resolution 83-01" dated March 19, 1983. This resolution stated that this project was

Tolowa Nation (Petitioner #85) Proposed Finding

Introduction

under the auspice of Nelchundun Business Council, Inc., with the administrative responsibility to implement a Status Clarification Resources Mobilization Project grant allocated by the Administration for Native Americans, Department of Health and Human Services. (Steinruck 3/22/1983)

The Department acknowledged receipt of material from the petitioner on April 18, 1983 (Fritz 6/9/1983), received further documentation and narrative on May 12, 1983 (Johnson 5/22/1983), and later, a “more ‘readable’” version (Slagle 7/7/1983). The Department responded to these materials by informing the petitioner that the petition required a current list of all members, individual history charts, ancestry charts for each family group, as well as “a statement or resolution signed by the governing body of Petitioner #85 to the effect that it approves and supports the documented petition” (Johnson 9/15/1986). On December 18, 1984, petition coordinator Sheryl Steinruck, advised the Department that the group had changed its name from Tolowa-Tututni Indians to Tolowa Nation. The Department received further materials on April 7, 1987 (Johnson 4/17/1987).

The Department reviewed the submission from Petitioner #85 and issued the first obvious deficiency (OD) letter on April 6, 1988. The letter advised the petitioner to:

- show the distinction between its own membership and the membership of the federally recognized Indian tribes at the Elk Valley and Smith River Rancherias;
- provide more information on community interaction from the 1950s through to 1983;
- document its claims that its members received Indian services;
- explain the relationships among the Nelechundun Business Council, Del Norte Indian Welfare Association (DNIWA), the Tolowa-Tututni, and Petitioner #85 councils;
- demonstrate how communication has been maintained between the various settlements in Del Norte County;
- document the extent of both current and historical participation in the annual harvest dances and other ceremonies and services described in the petition narrative;
- provide more information clarifying the “1983 Tribal Roll of the Tolowa Nation” as a list of membership; and
- provide the documentation on DNIWA mentioned in the narrative (Johnson 4/6/1988).

On October 4, 1994, the Department received a communication from an informed party titled “Resolution No. 94-41 Resolving that the Tolowa Nation Federal Acknowledgment petition be disallowed and be found in contempt of the greater Tolowa tribe. Crescent City, CA” (Green and Bommelyn 10/4/1994). The Department responded that “the BAR [Branch of Acknowledgment and Research] will place your name on the list of informed parties to the Tolowa nation petition so that you will be notified of any change in the status of the petition” (Sebastian-Morris 12/01/1994).

On May 1, 1995, Department staff met with representatives of Petitioner #85 to clarify questions raised by the OD letter. The Department summarized the discussion at the meeting and maintained, first, that the relationship of the group to Elk Valley and Smith River Rancherias still needed to be clarified. In particular, the letter stated that

Tolowa Nation (Petitioner #85) Proposed Finding

Introduction

[W]e would like to know how the historical Tolowa came to divide into these three groups. In addition, we would like you to discuss the ways in which your group remains an entity which is separate from those Rancherias and independent of their influence. (Reckord 5/31/1995)

Second, this letter further explained the need for more information on social interaction, to include “events or activities which have brought [the petitioner’s] members together and maintain the cohesiveness of [the petitioner’s] group” (Reckord 5/31/1995). Finally, it explained the issue of previous recognition, discussed at the meeting, by stating that if the Tolowa “were a party to unratified treaty negotiations with the United States” the petitioner may be able to benefit from the provisions in the revised acknowledgment regulations regarding previous Federal acknowledgment (Reckord 5/31/1995).

Petitioner #85 responded to the OD letter (Storr 8/3/1995) by providing further narrative. The response also requested that Petitioner #85 be placed immediately on active consideration for Federal acknowledgment.

On November 8, 1995, Petitioner #85 submitted an updated membership list, explaining that “some members moved and . . . had not returned their updated information to us” and asked to be “considered for previous recognition per your comment at the August visit” (Storr 11/8/1995). The Department responded to the submission in another technical assistance (TA) review letter, observing that the Department still required:

- family charts and other genealogical information similar to those provided for the 1983 roll;
- samples of documentation upon which the petitioner relied to verify the 1983 genealogical information;
- additional information regarding modern community, including “a good description of the informal social activities which bring members together with other members, especially in activities in which non-members do not participate;” and
- copies of the Sherman School annuals mentioned in the July 26, 1995, letter (Reckord 5/16/1996).

In response, Petitioner #85 provided a sample membership application package and certification of a membership roll, and again asked that its petition be placed on the list of petitions ready for active consideration (Storr 7/29/1996). The Department placed Petitioner #85 on the list of petitions ready for active consideration on July 30, 1996. The Department made this decision despite its observation that the “written response did not address the issue of the new members on [the] 1995 roll . . . [although Petitioner #85] gave [the Department] verbal assurance that these individuals were children of members and thus covered by their ancestry charts” (Reckord 7/10/1996).

On December 22, 1999, Petitioner #85 formally requested “Previous Recognition for the Tolowa Nation based upon submitted information” (Bowen et al 12/22/1999). The Department responded that because the petition had been declared ready for active consideration, “the issue of whether or not [the] group was previously recognized by the Federal Government will be

Tolowa Nation (Petitioner #85) Proposed Finding

Introduction

considered during the evaluation of [the] petition under ‘active consideration’” (Fleming 2/24/2000).

On August 3, 2009, the Department informed Petitioner #85 that it had been placed on active consideration, and asked that an updated membership list, certified by the governing body, be provided by October 2, 2009 (Fleming 8/3/2009). In response to a request from the governing body (Tolowa Nation 9/28/2009) the Department extended the deadline for updates until October 19, 2009 (Fleming 9/28/2009). The updated membership list, selected meeting minutes 1996-2009, a packet labeled “Tolowa Nation General Activities 1996-2009,” and a packet labeled “Nation Resources Planning and Interpretation Class” were included in the response (Sligh et al. 10/17/2009).

Documents Received: Governing Document.

The Department received a governing document entitled “Constitution of the Tolowa Nation,” dated July 23, 1983. This 1983 constitution defines the scope of the organization, membership requirements, the rights of members, and establishes the governing body of the organization. It was signed by the officers of the petitioning group and approved by the general membership on that date. During a site visit February 2010, Department researchers found evidence of at least two modifications to the constitution dated 1987 and 1996. These documents, and any other modifications, should be submitted as part of the documented petition.

Petitioner #85 by-laws establish the blood quantum of members as no less than 1/8 degree total Indian blood, and that 1/16 of this total blood quantum must be Tolowa. For what the by-laws refer to as “perpetual generational enrollment,” each individual must maintain 1/8 degree Indian blood.

Each individual must sign all “Enrollment for Membership” documents, unless they are minors. In this case, parents or legal guardians can sign for the applicant. Members may vote when reaching age 18, and are eligible to hold office in the Tolowa Nation at age 21. Adopted members must meet the requirements set forth for in the by-laws.

The petitioner does not require descent from a historical roll to determine membership. The petitioner does not explain the basis for determining Indian blood quantum and Tolowa blood quantum. In many instances the self-reported blood quantum does not agree with reports from other records.

Historical Background 1853-1906

Petitioner #85, with its headquarters in Fort Dick, Del Norte County, California, formed its current organization in 1982. It has a governing document with membership criteria and is composed of 88 members. The remainder of this section describes geographical details, and provides a historical narrative.

In 1851, George Gibbs, secretary of the northern treaty party under Colonel Redick McKee, part of a Federal effort that resulted in 18 unratified treaties in California between 1851 and 1852,

Tolowa Nation (Petitioner #85) Proposed Finding

Introduction

identified villages by location in the environs of the Smith River, and identified villages that were linguistically separated from their neighbors. Treaty efforts did not reach far enough into northwestern California for direct contact with the villages, so his research was based primarily on interviews with Yurok Indians. The Yurok described the “Tol-e-wahs” located south of Smith River as a “warlike band” that Klamath bands feared (Gibbs 9/29/1851).³ According to Gibbs, two other groups resided near the Tol-e-wahs, one at Smith River (Eenahs), and the Sians on the headwaters of the same river. The Yurok informants explained to Gibbs that “all these are said to speak different languages” (Gibbs 9/29/1851). The “different language” to which the Yurok referred was an Athabascan dialect spoken by the Indians, residing in villages in Del Norte County, who considered themselves different from the Yurok. The Gibbs description of villages occurred just before first sustained contact began in 1853, with the incorporation of Crescent City (Bledsoe 1885), about 15 miles south of the mouth of Smith River.⁴

The establishment of the Klamath Reservation in 1855 coincided with Federal Government efforts to concentrate the Indian population of northern California on a smaller land base. The removal of people from the village at the mouth of the Smith River appears to have occurred by late 1855. The Indian agent at Klamath, S. G. Whipple, attempted not only to teach agricultural skills to these displaced people, but also to protect them from the depredations by settlers common during the initial contact period. Even with a threat of violence, it proved difficult to keep the Smith River people at Klamath. In the summer of 1856, a Smith River Indian, the “son or nephew of the head man of the village,” with a pass and white flag from a Klamath employee had been killed by a white man while on his way to “visit his old home to look after some things they had buried at the village” (Whipple 6/11/1856). This event underscored the dangerous climate that existed near Smith River in the mid-1850s and the inability of the agent to protect Indians off-reservation.

It is difficult to determine which villages experienced removal to Klamath during this period. The agents mention Smith River and “Talawa” villages in their reports to the Superintendent of Northern California (Patterson 7/15/1856), but no lists or overall counts have been produced by the petitioner or found by OFA. Even though these people were destitute and in need, many of them had no intention of becoming farmers on a reservation. The agent at Klamath had a difficult time keeping the Indians from returning to their homes. The agent discovered that to keep them connected to Klamath required seasonal removals, as the families left for their fishing grounds each year. As the Klamath agent reported to California Superintendent George Henley, “I intend to remove to the reservation, in the course of fifteen or twenty days, about forty Indians from Smith’s river—the remnant of the Talawa tribe that Mr. Whipple moved last spring” (Patterson 7/15/1856). The Indian agent at Klamath could not protect the Tolowa that remained off-reservation near their homes in the Smith River valley. The threat of violence toward these people continued through the 1850s. In trying to prevent bloodshed between American settlers and tribesmen in Northern California, the Indian agent at Klamath viewed the off-reservation

³ Relying on eyewitnesses at time of first sustained contact, the anthropologist J. Owen Dorsey identified the village of Etchulet as “probably identical with the ‘Tolowas’ of the white people” (Dorsey 1890, 236), thus indicating that the Tolowas may initially have been identified by the Yurok as those living around Etchulet, at Lake Earl, as Kroeber also observed (Kroeber 1925, 125).

⁴ It was also indicated by the massacre of Tolowa Indians by non-Indian settlers at Yontockett around 1851 (Pfeiffer 1856).

Tolowa Nation (Petitioner #85) Proposed Finding

Introduction

Indians as at the mercy of “evil disposed whites” (Patterson 7/15/1856). The agent believed that only the reservation, with a contingent of soldiers, could hope to limit the threat of violence.

The military again attempted to relocate Indians from northern California to Klamath through 1857, including “some Indians at the mouth of Smith River in this valley” (Bryson 3/24/1863). Despite attempts by the military, most of the Indians at Smith River, Crescent City, and Lagoon remained near their homes the whole time or had returned to their original village sites regardless of the danger from settlers. In the summer of 1857 the Klamath agent identified the majority of the villages as “[i]n the vicinity of Crescent City and Smith’s River. . . some six hundred Indians, the remnants of the once powerful Lopas, Talawas and Lagoons; they are miserably destitute” (Heintzelman 7/13/1857). By 1857 the Klamath agent tried “to induce them to come into the reserve, but found them unwilling to do so” (Heintzelman 7/13/1857). The following year the agent reported that “twenty-three log houses” had been built for the 80 Indians that remained at Klamath (Heintzelman 7/1/1858). He had told the off-reservation Smith River “bands” to return if they wanted on their own, reasoning that “they had left of their own accord, and if they were so anxious to return why not come back as they went off” (Heintzelman 7/1/1858).

Whatever change the agent had accomplished at Klamath ended in 1861 when a flood destroyed the reservation. Most of the buildings, including “the agency headquarters, all the housing for the staff and Indians plus the stored wheat, corn, oats, barley, potatoes, carrots, peas, beans” was lost (Hanson 12/31/1861, 313). The flood washed away most of the arable land, making the reservation unsuitable for an Indian population depending on agriculture. The destruction of the Klamath reservation caused Superintendent Hanson to relocate north to the Smith River valley. With the majority of the Smith River bands still dwelling near their village sites, the Klamath agent leased land for relocated Klamath Yurok. During the entire period of this Smith River Reservation (1862-1868), the Federal government leased land for what the agent often referred to as the “Smith River Farm” (Bryson 5/10/1866).

In 1866, Indian Agent William Bryson described his charges and responsibilities at Smith River. As had been the case with earlier agents, Bryson specified that the reservation held only Yurok and Wylackie people, who remained “under the immediate control of the government” (Bryson 5/10/1866). The agent described in detail the location and numbers of the off-reservation Indians “who claimed this section of the country previous to the invasion of the white man and still remain upon the same locality their fathers occupied fifty years ago” (Bryson 5/10/1866). These locations corresponded with the village identifications by George Gibbs and the agents at the Klamath Reservation in the 1850s. Bryson identified “the Smith River (300 people), Burnt Ranch (200 people), Lagoon (150 people), and Crescent City Indians (150 people)” (Bryson 5/10/1866). The villages “each [occupy] the district allotted to them under the control of subordinate chiefs subject to the will of a Grand Tyhee (Guylish) whose place of residence is at the mouth of Smith River” (Bryson 5/10/1866). The nearby off-reservation villages remained outside the control of the Federal government, and as the agent explicitly explained:

are not under the immediate control of government nor subject to the rules and regulations governing the Indians of the reservation [600 to 650 Yurok and Wylackie] on the present rented farms from the fact that they have never been placed upon them. (Bryson 5/10/1866)

Tolowa Nation (Petitioner #85) Proposed Finding

Introduction

Following the removal of the Humboldt tribes (Yurok and Wylackie) from Smith River to Hoopa in 1869, the Smith River people continued to live either on or near their historical villages as late as 1913, often working as wage laborers in the nearby towns of Crescent City and Smith River (Terrell 6/22/1915). The villagers who stayed near their homes had many opportunities for wage work (Whipple 9/1/1870). The long-lasting fish processing plant at the mouth of the Smith River had employed the Indians known as the Island Band since at least 1870 (Kelsey 9/30/1909). The Hoopa Indian Agency Superintendent S. G. Whipple reported that many farmers in Del Norte County, in 1870, also employed Indian laborers.

In the early 1870s, historian Stephen Powers traveled throughout California writing ethnographic articles on many of the tribes in the state. In 1877, he published these articles as the *Tribes of California*. Powers observed in Del Norte County, “three tribes or bands of Indians who speak the same language, and have the same customs, and yet are often arrayed in hostility one against the other” (Powers 1877, 65). The historian located “the He-nag-gi along Smith River, the Tol-o-wa on the Lagoon, and the Ta-ta-ten around Crescent City” (Powers 1877). Powers witnessed fighting between the more numerous Tolowa and the Tataten, the latter “being a wretched remnant of thirty or forty souls” (Powers 1877). The Tataten “had fled with terror into Crescent City” and with their headman Ta-kho-kol-li, placed themselves “under the protection of the whites” (Powers 1877, 65). Powers believed the conflict occurred because the Tataten had “perpetrated some wanton outrage” on the Tolowa (Powers 1877, 65).

Twenty five years after the founding of Crescent City, then, Powers witnessed three bands with independent leaders exercising some authority over their separate villages (Powers 1877, 66). These bands continued to “have the coast partitioned off between them” with “each chief or head-man inheriting a portion in behalf of his band” (Powers 1877). According to Powers, each headman held their portion of the coast “by indefeasible right and attempt on the part of a neighboring band to appropriate any part of the treasures yielded them by the ocean, is strenuously resisted, and leads to bloody contentions” (Powers 1877, 66).

In the 1880s, 30 years after contact, there is some evidence that the Smith River people still occupied homes near their traditional village sites. According to anthropologist Philip Drucker’s informants, the Indians known as Tolowa lived in the 1880s in a number of villages each of which “was an almost completely independent economic unit, surrounded by a continuous area from which subsistence could be obtained” (Drucker 1937, 226). Around the mouth of Smith River were Howonquet, located on the north side, Yontocket (Burnt Ranch) located on the south side, and further up Smith River was Nelechundun, known as a fishing site. Around Crescent City were the villages of Etchulet, on the west side of Lake Earl (about three miles west of Crescent City); Mestleten, located on what is today known as Pebble Beach on the shore southeast of Crescent City; and Tataten, located to the east of Lake Earl on land where Crescent City is presently situated.⁵ For further detail see map.

⁵ The spellings for the village names are adopted from Drucker (1937) and Waterman (1925), unless frequent usage in other articles indicates other forms. For example, Drucker uses *Xawun hwut* for Howonquet, *Etchulet* for Etchulet, *Yotokut* for Yontocket, *Militcuntun* for Nelechundun, and *MesLteLtun* for Mestletun, among others.

Tolowa Nation (Petitioner #85) Proposed Finding

Introduction

In his report of February 2, 1907, Special Agent Charles Kelsey, listed specific individual Indians residing on the islands at the mouth of the River, at the fishing ranch nearby, at Yontockett on the south side at the mouth of Smith River; at Howonquet, on the north side of the mouth of Smith River; at Lake Earl near Crescent City; and around Crescent City itself (Kelsey 2/2/1907). Kelsey described the Indians as Athabascan-speaking seasonal workers in the fishery at Smith River. The long term relationship continued as generations of band members worked in the fishery business in Smith River. As late as 1913, Special Agent John Terrell reported that informants told him that the Indians listed by Kelsey as living around Lake Earl in 1906 had “moved away from the Lake, most of them living in and around Crescent City, where work in the saw-mill can be found or nearby ranches that give employment” (Terrell 6/22/1915, 1).

Issues Pertaining to Historical Indian Tribe

The regulations require a demonstration of the petitioner’s descent and continuous existence from a “historical Indian tribe,” or from historical Indian tribes which combined and functioned as a single autonomous political entity. The petitioner may show its descent and continuous existence from all the villages within such a cultural and social group as one Tolowa tribe, or else it may show that the historical tribe was a single village or some kind of subgroup of these villages. Thus, the petitioner will need to demonstrate that it evolved as a group from these villages that were component parts of one political entity at the time of first sustained contact, or that it evolved from villages and subsequently combined into a single political body.

To show that villages were part of one political entity, whether at the time of contact or when combined at a later date, the petitioner should demonstrate that political influence or authority existed throughout the group, either at the time of contact or at a later date of amalgamation. Absent specific evidence of a single leader or governing body which encompasses the entirety of a group at any given time, the petitioner may show evidence of political relationships among the members of the different villages or relationships among local leaders, as defined in § 83.1, to demonstrate that the requirements of the definition of “political influence” in § 83.1 are met. Leaders may be formal or informal.

Examples must not only show interaction, but also show political influence, consistent with the limitations inherent in demonstrating the historical existence of community and political influence or authority. To identify such influence, the examples might show whether and how headmen or individuals in one village could summon the labor, resources, or goods from individuals in another village on a regular basis through time, either directly from these individuals, or through the headmen of these villages, or other evidence described in § 83.7(c)(1). Examples may also show the establishment of long term alliances between the villages themselves.

Beginning with Gibbs in 1852, contemporary observers identified villages of Athabascan speakers in the environs of Smith River and Crescent City. Dorsey listed the speakers of the shared Athabascan language “stock” as the Indians living at “Applegate Creek, Galice Creek, Chasta Costa, Upper Coquille, Chetco, Mikonotunne, Tutu (and Joshua), Euchre Creek, Sixes Creek, Naltunne tunne, Smith R. (Cal.), and Upper Umpqua.” With the exception of Smith River, all reside in southern Oregon (Dorsey 1889, 55). Of the few identifications of leadership

Tolowa Nation (Petitioner #85) Proposed Finding

Introduction

within these villages, one is the 1856 description by the Klamath Indian Agent S. G. Whipple, of the “son or nephew of the head man of the village,” returning to the mouth of the Smith River. The most detailed explanation of some political authority over these culturally related villages was provided by Smith River Indian Agent William Bryson. The Indian Agent described villages “under the control of subordinate chiefs subject to the will of a Grand Tyhee.”

Gibbs found that the term “Tyhee” denotes someone of status who was involved in the long-distance trade of the Pacific Northwest (Gibbs 1863, 28). This trade involved Indians of British Columbia, Washington, Oregon and northern California, as well as English, French, and French Canadian merchants (Eels 1890, 308). Other scholars maintained that the term’s origin was from the Nootka, and incorporated into the Chinook trade jargon, to denote a high-status participant, such as a “chief, gentleman, officer, superior, “boss,” foreman, manager, Indian agent, king, emperor, president [or] anything of superior order” (Shaw 1909, 28). The meaning of Bryson’s claim that other chiefs are “subject to the will” of a Tyhee is unclear, since he may be referring to individuals residing in “suburbs” to certain villages. According to Drucker’s informants reporting for the 1880s, however, a “suburb” was an extension of a village, and not considered by its inhabitants as a separate political entity (see Drucker 1937, 243-244 below). Also, Powers’ recollection in 1877 discusses three distinct bands led by headmen without referencing a single leader of unifying political authority.

Agent Bryson’s attribution of political leadership, and the existence of some political authority under Guylish, presents the possibility that the villages did come together in the 1860s. Information from ethnographic and historical documentation reflects general scholarly observations on authority and describes social interaction among groups and individuals from different villages generally referred to as Tolowa.⁶ Such social interaction included marriage exchanges, ceremonial activities, homicide, systems of payment and compensation, and subsistence activities such as hunting, fishing, and gathering. While much of it refers to life from the 1870s through the 1890s, it may provide evidence of informal authority indicative of a single political entity. However, while these documents provide information important to characterizing social organization and political influence, the time frames to which they refer are not always definite, and are in some cases reconstructions of earlier social organization, based on recollections of certain informants.⁷ Contemporary accounts of life in the villages and the role of leadership may help resolve whether the Tolowa was a political unit in which villages were political subdivisions, or whether the villages were the political units, as indicated by Kroeber (1925, 1124-125) and Drucker (1937, 243-244).

⁶ Anthropologists cited in this section include Dorsey, who conducted research in 1884 (Dorsey 1889, 1890), Kroeber, who conducted his research in 1904 (Kroeber 1925), Cora DuBois, in 1929 (DuBois 1932), Phillip Drucker, in 1933 (Drucker 1937) and 1934 (Drucker 1934), and Richard Gould, in the early 1960s (Gould 1968). Also included was the historian Steven Powers, whose historical report was also utilized by Kroeber (Kroeber 1925). All these scholars relied on informants who were eyewitnesses to the events the scholars described for the 1850s (Dorsey, Kroeber, and Powers), 1870s (Dorsey, Kroeber, Powers, Drucker, DuBois), 1880s (Dorsey, Kroeber, Powers, Drucker, DuBois), and 1890s (Kroeber, Drucker, DuBois, Gould).

⁷According to Kroeber, his book was “a history in that it tries to reconstruct and present the scheme within which these people [i.e. the Tolowa] in ancient and more recent times lived their lives” (Kroeber 1925, v).

Tolowa Nation (Petitioner #85) Proposed Finding

Introduction

Anthropologists have elaborated on the marriage system as one in which men would marry women from neighboring villages. Such marriages involved a nuanced exchange system often referred to as bride purchase. As explained by DuBois, “[b]ride purchase existed but with the usual compensatory gifts from the girl’s family” (DuBois 1932, 252). One of Drucker’s informants highlighted the reciprocal nature of the payments by noting an example from the 1870s, in which a man made part of a bride purchase to the woman’s father, an important head man, and was “half-married.” This status meant he lived in the village of his wife, instead of moving with her to his natal village. When their first baby died in childbirth, the headman made a payment to the husband, who then paid to the headman a somewhat larger sum, in order to become fully-married (Drucker 1934).

Regarding ceremonial activity, DuBois (1932) cited major ceremonies such as the Feather Dance and First Salmon ceremonies that were attended by people from different villages. DuBois further described puberty ceremonies and other ceremonies that indicate that the people in the village where the ceremony is held generally provided the food and other support necessary for the ceremony. However, neither DuBois’ accounts nor those of Kroeber (1925) or Drucker (1937) indicate instances in which rich-men or their followers in villages outside of where the ceremony was being held were called upon to provide such support.

Kroeber (1925) and Drucker’s 1934 field notes, as well as his 1937 monograph, describe patterns of homicide between villages from time of contact through the 1890s. Writers described revenge killings carried out between individuals from different villages (Drucker 1934, 1937). It is not clear, however, whether these conflicts were between villages or between factions from two different villages. As summarized by Gould, for around the 1890s:

Fighting among Tolowa and between Tolowa and other groups was common but never assumed proportions which might be regarded as organized warfare. The men of a village might attack another village in an effort to kill or injure the kin of some person who had killed or injured one of their kin. Owing to the fact that so many marriages occurred between villages (creating a network of kin ties between villages) it is not unusual for members of different villages to band together in some of these retaliatory raids, but as Drucker correctly indicates these were situations in which men from different villages fought together as independent allies rather than permanent alliances. (Gould 1966, 80)

Powers (1877) cited conflicts between Tolowa villages during the 1870s, and Kroeber (1925) cited conflicts with the neighboring Yurok in the 1850s. Evidence suggested patterns of raiding and killing carried out by groups of people, sometimes between villages, with feuds and grudges being held.

Tied closely with this revenge killing was a pattern of payment. Referred to by some anthropologists as wergild (Drucker 1937, 245) or fines (Gould 1966, 79), offenders offered these payments to avoid retaliation or escalation of violence (Drucker 1934; Gould 1966, 79-80). In these cited instances individuals in villages drew from their own assets, were assisted by the rich-men, or were able to obtain support from relatives (Drucker 1934). In instances of homicide, payment was not guaranteed. One of Drucker’s informants cited an example in which

Tolowa Nation (Petitioner #85) Proposed Finding

Introduction

a killer hoped to avoid retaliation through payment from his relatives. However, either no payment was forthcoming or the aggrieved relatives refused to accept an offer, and he was subsequently killed (Drucker 1934).

Subsistence included fishing, hunting, and gathering. A yearly subsistence cycle often involved sea lion hunting in the spring, smelt fishing in the early summer, salmon fishing in the late summer, gathering of acorns and other plants in the fall, and hunting in the winter. Drucker maintained that village rich-men tended to reserve certain coastal fishing sites and sea lion hunting sites for their exclusive use. From time to time people from other villages asked permission for access to such sites, indicative of shared political knowledge among villages and control of resources, but evidence is insufficient to show that headmen negotiated any arrangements for such access (Drucker 1937). For the most part, women from a single village gathered plant resources (Gould 1966).

Gould cited informants who recalled how the men in a village would construct canoes for their rich-man in the 1880s and 1890s (Gould 1968). The article shows how men from each of the villages would build dugout canoes from redwood logs, to be used for the benefit of the rich-men leaders from their villages. The article shows that several villages could occasionally coordinate their hunt with the headmen from one of the villages. Once the canoes had reached the sea lion hunting rocks, however, every group hunted on its own. Upon return to their respective villages, each rich-man would preside over dividing the sea lion meat among the villagers. These examples of hunting and other subsistence show at least an informal authority at the village level and coordination between villages.

Finally, the lack of a historical list of the petitioner's ancestors and the persons socially connected to them in a community from 1855 to 1907, compounds the difficulty of connecting the petitioner to a historical tribe, at the village level or within such a cultural and social group as a greater Tolowa tribe. Such a list, whether occurring in a single document created by officials or others during this period or compiled from various sources by the petitioner in the course of research, may provide a factual foundation for describing a historical political community during this period. A compilation or list of ancestors, their locations, kinship, economic, and other types of social relationships the ancestors may have had to others in a community, and citations for this information, may aid in gaining a better understanding of the composition of the historical community and the social and political changes occurring during this period. Families may have left the community, individuals from other tribes may have married into the community, and other families may have left no heirs or descendants. Such information and related analysis is necessary to determine whether the petitioner has evolved from one or several villages to become the current petitioner with its present membership. The petitioner needs to describe the changes occurring in their community during this period (and subsequent periods) to show how a community has continuously evolved to become the current petitioner with its specific membership. The petitioner is advised to compile this information and submit it in its response to this PF in order to address issues that will arise if an amended proposed finding is issued, particularly in the context of descent from the historical tribe.

Tolowa Nation (Petitioner #85) Proposed Finding

Introduction

Identification of Ancestors

Membership Lists

Petitioner #85 submitted four modern membership lists prior to active consideration, and no historical membership lists.

Membership List Date	Total Members	Includes Minors?
December 31, 1983	130	No
September 27, 1986	338	Yes (100)
1996	166	No
November 2009	102	No

Department researchers found that five individuals listed on the 2009 membership list are deceased, eight have since been removed from membership, and one has resigned. As a result, only 88 of the 102 individuals on the 2009 list are known to be current, living members, 1 of whom is enrolled at the federally recognized Smith River Rancheria.

Membership Files

An audit of the petitioner's membership files during a February 2010 site visit revealed that most files contained signed membership application forms and ancestry charts that illustrated each member's claimed ancestry back to at least one individual who appeared on the 1933 "Census Roll of the Indians of California Under the Act of May 18, 1928" (1933 Census Roll).⁸ The files also contained birth, marriage, and death records to document the members' claimed ancestry, with some exceptions. The petitioner does not maintain separate membership files for minors.

Petitioner's Claimed Ancestors

The petitioner did not provide a genealogical database of its members and their claimed ancestors. The Department researchers created such a database (Family Tree Maker®) from the submitted membership lists, and three-generation charts, which illustrated most members' ancestry back to individuals who appeared on the 1933 Census Roll. Staff extracted the data from the 1928 applications for the 1933 Census Roll, some of which included probate files, and added that information (back to 1852) to the database. Also added to the database were data gleaned from BIA rolls of Smith River, Crescent City, Elk Valley, Hoopa Valley, and Siletz reservations; Charles E. Kelsey's 1906-07 enumerations of Athabascan-speaking Indians of Del Norte County (Kelsey 2/2/1907); and Federal census records.

The 1933 Census Roll did not purport to list members of Indian tribes, but rather the descendants of Indians who were living in California in 1852. The applicants self-reported their claimed ancestry and did not supply evidence supporting those claims. If an amended proposed finding is

⁸ Known officially as *Census Roll of the Indians of California under the Act of May 18, 1928 (45 Stat., 602)*, this roll was submitted by Special Agent F.H. Baker on March 8, 1933, and is sometimes referred to as the "Baker Roll."

Tolowa Nation (Petitioner #85) Proposed Finding

Introduction

issued with an evaluation under §83.7(e), the Department would verify this ancestry and rely upon other publicly-available records such as vital, church, census, and probate records to corroborate the genealogical claims made in the 1928 applications for the 1933 Census Roll, consistent with precedent in other acknowledgment cases.

As summarized in an earlier Federal acknowledgment decision:

In 1928, Congress passed legislation entitled “An Act Authorizing the Attorney General of the State of California to bring suit in the Court of Claims on behalf of the Indians of California . . . to remedy Indian land losses in California which were a consequence of the Senate’s refusal in 1852 to ratify the 18 treaties negotiated in 1851-1852. Under the terms of the 1928 Claims Act the Attorney General of California brought suit against the Federal Government in the Court of Claims on behalf of Indians resident in California who descended from individual Indians who lived in the state on June 1, 1852. The Act did not provide for the recognition of contemporary tribal entities. Rather persons who claimed descent from Indians who lived in California on June 1, 1852, could individually apply (submitting a document entitled “Application for enrollment with the Indians of the State of California under the Act of May 18, 1928”) for inclusion on a claims roll. The claims roll (entitled “Census Roll of the Indians of California Under the Act of May 18, 1928”) . . . was to be prepared under the direction of the Secretary of the Interior (U.S. Statutes 1928) In 1930, Congress amended the Act to provide for the submission of additional applications until May 18, 1932 (Collier 5/9/1933). The Secretary of the Interior approved the roll on May 16-17, 1933. (Juaneno #84a PF, 2007, 26)⁹

The 1928 applications for the 1933 Census enrollment filed by Petitioner #85’s earlier family members claimed their ancestry back to Indian individuals living in California in 1852. The tribal affiliations they attributed to these historical individuals appeared as “Smith River,” “Lagoon,” “Tolowa,” or town names such as “Howonquet” and “Big Flat.” The earliest ancestors of the 88 current members, as claimed by the applicants for the 1933 Census, included eight families: Haines-Roberts (ancestral to 36 percent of the current petitioner); Charles (21 percent); Van Pelt (6 percent); Albert, Haines-Brundin, Lagoon (5 percent each); Pete, and Green (2 percent each). The petitioner entered the ninth family, the Fry-Meservey line (17 percent), as a result of the membership drive for their 1983 petition submission. Before the 1950s they resided in Curry County, Oregon (Fry 2/12/2010). The ancestry for one adopted member is not documented.

Of the 88 current members, none claims descent from an individual enumerated on either the 1900 or 1910 Indian Population Schedule for Del Norte County, CA. Nine of the 88 current members claim descent from four individuals enumerated on the 1906-1907 Kelsey lists of Athabascan-speaking Indians: four members claim descent from both Oscar Brundin at Crescent City Road, and Julia Hammond in Crescent City; four members claim descent from Julie “Susie”

⁹ For additional discussion of the 1928 Claims Act see Muwekma PF, 119-120; Muwekma FD, 16-17.

Tolowa Nation (Petitioner #85) Proposed Finding

Introduction

Tec-Nah, in Lake Earl; and one member claims descent from John B. Green, in Smith River (Kelsey 2/2/1907).

Department researchers located many of the petitioner's other claimed Indian ancestors in the general population schedules of the 1900 Federal census (in Smith River, Del Norte County, CA, and Curry County, OR) and the 1910 Federal census (in Crescent City and Klamath, Del Norte County, CA, and Curry County, OR). Direct name matches seldom occurred, so there may be additional petitioner ancestors in these census records who could not be readily identified. Census enumerators recorded many of the historical individuals claimed as Indian ancestors as "In" ("Indian"), "W" ("White"), or "M" ("Mixed" or "Mulatto").

Tolowa Nation (Petitioner #85) Proposed Finding

Unambiguous Previous Federal Acknowledgment

UNAMBIGUOUS PREVIOUS FEDERAL ACKNOWLEDGMENT (§ 83.8)

If substantial evidence demonstrates Petitioner #85 had unambiguous previous Federal acknowledgment as an Indian tribe, then the requirements of the acknowledgment criteria in § 83.7 are modified by the provisions of § 83.8(d). If a petitioner claims previous acknowledgment, the evidence in the record is reviewed to determine whether it is sufficient to meet the requirements of “previous Federal acknowledgment” as defined in the regulations (§ 83.1). This inquiry is made solely for the purposes of this regulatory process. The intent of this evaluation is to determine only the eligibility of Petitioner #85 to be evaluated under the reduced evidentiary burden of § 83.8(d) of the regulations. Three of the seven acknowledgment criteria—criteria 83.7(a), 83.7(b), and 83.7(c)—are modified by § 83.8(d) for petitioners with unambiguous previous Federal acknowledgment. Because this determination is based on one of those three criteria, criterion 83.7(b), the Department conducted an evaluation for unambiguous previous federal acknowledgment.

The regulations in § 83.1 define previous Federal acknowledgment as “action by the Federal Government clearly premised on identification of a tribal political entity and indicating clearly the recognition of a relationship between that entity and the United States.” The text of § 83.8 and the explanatory comments in the preamble to the regulations state that previous acknowledgment must be “unambiguous” (59 FR 9283).

A petitioner is eligible to be evaluated under 25 CFR § 83.8 if it provides substantial evidence that the Federal Government acknowledged, by its actions, a political relationship between the United States and the petitioner as an Indian tribe. The explanatory comments in the preamble to the regulations state, “the regulations require that previous acknowledgment be unambiguous and clearly premised on acknowledgment of a government-to-government relationship with the United States” (59 FR 9283). If there is substantial evidence that the Federal Government established such a relationship, the Department must then determine whether the petitioner is able to advance a claim that it is the same tribal entity that was previously acknowledged or is a portion that has evolved as a group from the previously acknowledged Indian tribe (see §§ 83.8(a), 83.8(d)(1)).

As indicated in the administrative history, Petitioner #85’s request for previous acknowledgment referred only to “submitted information,” and provided no further direction or discussion. In the absence of a more explicit presentation from Petitioner #85, Department researchers examined the following Federal actions as possible unambiguous previous acknowledgment:

- the establishment of the Klamath Reservation from 1855 to 1861 and the Smith River Reservation from 1862 to 1869;
- the establishment of the Smith River, Elk Valley, and Resighini Rancherias in 1906, 1908, and 1938 respectively (Tiller 1996); and
- interaction with the Del Norte Indian Welfare Association (DNIWA) from 1941 through 1968.

Tolowa Nation (Petitioner #85) Proposed Finding

Unambiguous Previous Federal Acknowledgment

aSmith River/Klamath Reservations

Federal officials first established the Klamath Reservation by Executive Order of November 10, 1855 (Manypenny 11/10/1855). This reservation temporarily housed some Indians from Smith River, but officials ceased to maintain them on the reservation, as shown in the historical narrative. After the catastrophic flood of 1860-1861, officials leased land at Smith River. Through Secretarial Order of April 9, 1862, agents established a Smith River Reservation (Dole 4/9/1862). It appears that it housed Indians from Humboldt County, and not those residing in the Smith River area. It was discontinued by Act of Congress July 27, 1868 (15 Stat. 221). After closing the Smith River lease, the BIA maintained that they had directed the “Smith River Indians” (most likely Humboldt County Klamath Indians) to be removed to the Hoopa Reservation.

From the 1870s through the end of the 1890s, the only evidence Department researchers found documenting Federal oversight of the Indians in Del Norte County was a report of the Board of Indian Commissioners that listed the Smith River Indians in 1871 as under the supervision of Hoopa Agency Superintendent David H. Lowry (Colyer 1871, 184). No further information is available on who these Indians were, and no information was provided on the relationship of the Hoopa Agency to Petitioner #85 or its ancestors. This evidence does not reflect a relationship with a political entity and is not substantial evidence of unambiguous Federal acknowledgment of this petitioner.

Smith River, Elk Valley, and Resighini Rancherias

In the 1906 appropriation act, Congress authorized the Secretary of the Interior to purchase “suitable tracts or parcels of land” for “Indians who are not now upon reservations” in California (34 Stat. 333). Indian agents purchased lands that became the Smith River Rancheria and the Elk Valley Rancheria by using the appropriations and citing the authority provided by the 1906 and 1908 appropriation acts (34 Stat. 333, 35 Stat. 76). The Indian Reorganization Act of (IRA) of 1934 (48 Stat. 984-988) provided the opportunity for any Indian tribe or tribes residing on the same reservation to organize governments. The IRA definition of “tribe” includes Indians residing on a reservation. The IRA also provided for the purchase of land for Indians, which included those of “half-blood” or more.

None of Petitioner #85’s ancestors were known to be enrolled at Smith River. Two families were enrolled at Elk Valley, but did not remain there. An enrollment census compiled by Special Agent Henry Roe Cloud in 1939 identified members of Smith River and Elk Valley Rancherias, as well as other Indians in Del Norte County, as eligible to apply for enrollment on the proposed Resighini Rancheria, in Humboldt County to the south of Del Norte County. However, Department researchers found no evidence that Indians known to be ancestors of Petitioner #85 were enrolled on the Resighini Rancheria, or were provided land there.

Tolowa Nation (Petitioner #85) Proposed Finding

Unambiguous Previous Federal Acknowledgment

The three rancherias, Elk Valley, Smith River, and Resighini, are Federally recognized today.¹⁰ Because the petitioner's ancestors were not enrolled at these rancherias and did not evolve as a group from them, then the foregoing is not evidence of unambiguous previous Federal acknowledgment for this petitioner.

Del Norte Indian Welfare Association (DNIWA)

According to Petitioner #85, DNIWA began in the early 1930s and functioned as the equivalent of an Indian tribe, or at least as a political representative of the petitioner, as late as 1997 (Storr 8/3/1995). However, the Federal Government specifically declined to deal with DNIWA during the planning process for termination in 1952 (Hill 10/2/1952), instead dealing with the two rancherias. The government maintained that this organization was formed "as an organization to promote the social objectives of those individuals of . . . Indian descent" (Robertson 4/15/1958). The government never considered DNIWA a tribal political entity, and therefore it is not substantial evidence of unambiguous previous Federal acknowledgment.

Conclusion

Evidence in the record is insufficient to show previous Federal acknowledgment of the Indians residing in the villages known as "Tolowa," either as separate entities or as one entity that included the ancestors of Petitioner #85. Evidence is also insufficient to show that they evolved from the Indian groups at the Klamath Reservation established in 1855 or at the Smith River lease in 1862. The evidence is insufficient for the time period 1869-1903 to show a political relationship with a group in Del Norte County that included petitioner's ancestors, from which they evolved. Hence, there is an absence of evidence showing previous unambiguous acknowledgment before the formation of the Elk Valley, Smith River, and Resighini Rancherias.

Unambiguous Federal acknowledgment of some of the Del Norte Athabascans, or Tolowa, of the Elk Valley and Smith River Rancherias continues to the present day. Because the petitioner's ancestors were not enrolled at these rancherias and did not evolve as a group from them, Petitioner #85 has not shown unambiguous previous Federal acknowledgment based on the government's acknowledgment of the Smith River and Elk Valley Rancherias.

¹⁰ On August 1, 1953, Congress announced as Federal policy the termination of Federal responsibility over Indian tribes, and declared that "Indian tribes and individual members thereof, should be freed from Federal supervision and control and from all disabilities and limitations especially applicable to Indians" (67 Stat. B132). These Federal responsibilities were to be transferred to the states, and all Federal responsibility was to cease. As a result of the 1958 California Rancheria Act (72 Stat. 619), Elk Valley was terminated July 16, 1966 (FR, 9685), and Smith River on July 25, 1967 (FR 11089-11090).

In 1979, California Indian Legal Services filed a class action suit against the Federal Government, claiming the government fell short of promises for public improvements promised as part of the 1958 Termination Act. The suit was filed on behalf of Pinoleville Rancheria resident Tillie Hardwick and other individual plaintiffs on behalf of 36 rancherias. On July 19, 1983, the United States District Court for the Northern District of California approved a settlement restoring 17 California Rancherias, including Elk Valley and Smith River. In 1983 (United States District Court, Northern District of California 7/19/1983) the Smith River and Elk Valley Rancherias were restored and remain as federally recognized Indian tribes to the present.

Tolowa Nation (Petitioner #85) Proposed Finding

Unambiguous Previous Federal Acknowledgment

The Federal Government never recognized DNIWA as a tribal political entity. Thus, there is no substantial evidence that the petitioner has unambiguous previous federal acknowledgement as an Indian tribe, or would be eligible to have the petition reviewed by the provisions of § 83.8(d). Thus, the petitioner will be evaluated against the criteria in § 83.7.

Tolowa Nation (Petitioner #85) Proposed Finding

Summary of the Criteria - Criterion 83.7(b)

SUMMARY UNDER THE CRITERIA

Criterion 83.7(b)

- 83.7(b) A predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present.

Introduction

The evidence submitted by Petitioner #85, and evidence Department staff obtained through its verification and evaluation research, is insufficient to demonstrate that Petitioner #85 meets the mandatory criterion for Federal acknowledgment, § 83.7(b). Discussion of criterion 83.7(b) addresses what is known about the Athabascan speaking Indians of Del Norte County, California, known as the Tolowa, from 1853 to 1868, 1869 to 1899, 1900-1933, 1934-1949, 1950-1982, and 1983-present. These time intervals are marked by events that affected the people in the area dramatically or that provide important context for understanding the evidence used in this evaluation. The discussion outlines the evidence provided by the petitioner and evidence obtained through Department research, and describes what this evidence shows. In general, evidence is insufficient to show either that Petitioner #85 existed as a distinct continuous community from 1853 to the present, that it evolved from the villages or settlements from 1869-1900, or evolved as a distinct community from the Elk Valley or Smith River Rancherias that formed between 1906 and 1915.

Evidence for years 1853-1868

This period begins with the first sustained contact, in 1853, and ends with the relocation of Indians to Hoopa and the closure of the Smith River Reserve in 1868. The petition narrative associates individuals with villages identified as Tolowa from 1853 to the closure of the Smith River Reserve in 1868. However, it appears to draw its evidence primarily from modern-day oral accounts and self-reported information from the 1933 Census Roll. The narrative provides no contemporary documentation based on eyewitness accounts. The petitioner cited contemporary newspaper articles for this period, but did not provide copies of them. Those copies that Petitioner #85 provided are retrospective articles from the 1980s, and provide insufficient evidence linking Petitioner #85 to the social interaction occurring at that time.

Similarly, the petition narrative maintains that the Federal Government forcibly resettled Indians living at Smith River and vicinity to the Klamath, Hoopa, and Siletz reservations. As indicated in the historical background above, the record does not support contentions that Smith River Tolowa faced protracted forced resettlement; rather, it supports evidence showing the continuous residence of Tolowa in the Del Norte County area. While documentation mentions interaction among villages, none of it mentions individuals who could be identified as ancestors either of Petitioner #85 or of the Smith River or Elk Valley Rancheria populations.

The historical background above describes evidence showing that the Federal Government attempted to relocate some of the Indians from villages associated with Athabascan-speaking

Tolowa Nation (Petitioner #85) Proposed Finding

Summary of the Criteria - Criterion 83.7(b)

Tolowa to the Klamath Reservation in 1855. After the flood of 1860-1861, it appears that the Athabascan-speaking Indians, whom the Federal Government had resettled at Klamath, returned to their homes around Smith River, and were not relocated onto any other reservation. In 1861, the Federal Government leased 1,200 acres of developed farm land from Saville and Darby (Maltby 9/12/1865, 113), at Smith River (Hanson 12/3/1861, 313), and on May 3, 1862, designated it as a reservation (Smith 5/3/1862).

Indian agents distinguished between those Indians who left Klamath and returned to Smith River and those whom they resettled on the Smith River lease. Agent Bryson wrote that for the former:

Their outward appearance is much better than that of the reservation Indian; they are better clothed and appear more healthy, and have better houses to live in. They select their own ground for their houses, and seem to take more pains in building. The outside Indians seem to have a horror of the reservation; they look upon it as a punishment to be taken to a reservation to live. (Bryson 8/11/1865, 511)

Bryson provided an estimated number of 800 non-reservation Smith River Indians in the area. However, neither the petitioner provided, nor did Department researchers find, a list containing individual names.

A diary maintained by a non-Indian Smith River Lease employee noted hostile interaction between the Athabascan-speaking villages and the Humboldt County Indians on the lease. Indians from the former were employed on the farm; those from the latter were residing on the lease. Another account shows that Indians from Yontocket, one of the Smith River villages, clashed with the Humboldt County Yurok Indians (Stevens 8/3/1867, 139).

While the petition narrative described individuals working on the lease whom it claims are ancestors of Petitioner #85, neither the petition provided, nor Department researchers found, any contemporary documentation naming these individuals or placing petitioner's ancestors on the lease. The 1860 Federal Census identifies some individuals as "Indian," but most identified Indians were located in non-Indian households where they were employed variously as laborers and housekeepers. None of the identified Indians on the 1860 Federal Census can be linked to Petitioner #85 ancestors, except for Jane Messervey, in Curry County, Oregon. The descendants of Messervey did not arrive in Del Norte County until 1953 (Fry 2/12/2010).

In 1868, Congress appropriated funds to relocate the Indians from Smith River to Hoopa (15 Stat. 221). On November 17, 1868, the day of the removal to Hoopa, Agent Billington C. Whiting reported that 320 Indians had arrived at Hoopa (Whiting 8/1/1869, 198).¹¹ Those relocated Indians were primarily Humboldt County Klamath, and it appears that the Del Norte

¹¹ Whiting reported that:

[o]f the Indians found at Smith River on the 27th day of November, we succeeded in getting two hundred and twenty-five through to Hoopa Valley. Ninety-five of the runaway Indians were afterward collected in Humboldt County and taken to the same reservation, making an aggregate of three hundred and twenty.

Tolowa Nation (Petitioner #85) Proposed Finding

Summary of the Criteria - Criterion 83.7(b)

County, California Tolowa Indians remained in the villages around Smith River, Crescent City, and Lake Earl, living in their traditional villages throughout this period. Information is lacking, however, connecting these Indians to Petitioner #85.

Evidence for years 1869-1902

Following the consolidation of the California Superintendency in Sacramento, and the establishment of the Northern California Agency at Hoopa, OFA researchers found no records or reports of the Hoopa Agency pertaining to Indians in Del Norte County. Petitioner #85's narrative relies on modern-day oral accounts, contemporary newspaper articles that were not submitted, and retrospective newspaper articles to describe ceremonial, social, and political life from 1869-1899. The narrative maintains that Petitioner #85 ancestors continued to reside in the traditional villages described in the Introduction. However, much of the description, particularly of ceremonial life, is not supported by documentation based on contemporary eyewitness accounts.

Evidence obtained by Department researchers includes eyewitness recollections taken from the field notes taken by Phillip Drucker (1934), relating to 1880-1890; reports of Agent Charles E. Kelsey, from 1907 to 1913, relating to Indians who had lived consistently on and near islands at the mouth of Smith River from around 1870 to 1907; a monograph by Cora Dubois (2007),¹² describing the Ghost Dance in Del Norte County during the 1870s; U.S. Census information 1870-1880; and Government Land Office (GLO) records obtained from the Bureau of Land Management (<http://www.glorerecords.blm.gov/>). There is no indication of any distinct community of the petitioner's ancestors evolving at this time.

Phillip Drucker's informant George White was eyewitness to continuing reciprocal (if not always amicable) social interaction among villages that took place in the 1880s and 1890s.¹³ George White identified some people by the semi-autonomous villages in which they resided, including:

- at Lagoon: George White, Jenny Scott, Mrs. Hostler, Sally Johnson, Emma White, Ben White, Lena Lopez, Mabel Brown, Freddie Billy, and "his brother;"
- at Yontocket: Henry Johnson, Mrs. Alec Billy, Elaine [unclear], Raleigh Grimes, and Rosie Billy;
- at Howonquet: Frank Hostler, Freddie Hostler, Donnie Flannery, Alec Billy, Alec Billy's mother, Norman George, Albert Charley, Harry Bob, and Mary (Lena's mother);
- at Nelechundun: Clara White, Nancy Jim, Jesse James, and Lucinda Hostler;
- at Mestleten (next to Crescent City): Maggie Billy, and Fred Charley; and
- at Tataten: Mrs. Johnnie Cook, Gordon Pete, Willie Pete, and Jimmy Billy.

Fred Charley and Willie Pete are the only two lineal ancestors of the 2009 Petitioner #85's members that are mentioned by George White. They were involved in the social interaction during this time. George White noted examples of sharing sea lion hunting rocks, and settling

¹² The monograph was originally published in 1939.

¹³ George White is listed on the 1900, 1910, and 1930 Federal censuses; on the Kelsey census as residing at Crescent City (Kelsey 9/30/1907); and on the 1930 BIA Census for Crescent City (Elk Valley).

Tolowa Nation (Petitioner #85) Proposed Finding

Summary of the Criteria - Criterion 83.7(b)

disputes over damming fishing sites along Smith River. He also noted marriage payment practices and revenge killing. He noted that the Indians were gaining employment in Crescent City, even while living in their villages. Finally, he reported that the Indians restricted the scope of their violence and other activities for fear of involving the Del Norte County sheriff and other authorities (Drucker 1934). This evidence, thus, shows that some of Petitioner #85's ancestors were involved in interaction indicative of a social community, but does not show that they constituted an entity distinct from the others, or were part of any entity evolving from the people White described.

A second major source of information came from Special Agent Charles E. Kelsey's account of the Fish Ranch at Smith River 1906-1909. He reported that John Lopez had moved about 1870 from near Islais Island, where he had been living, to a nearby fish ranch, owned by non-Indians (Kelsey 9/15/1908).¹⁴ Allowed to live there during fishing season, he built a house, and encouraged other Indians to move in as neighbors (Kelsey 9/30/1909).¹⁵ Kelsey mentioned John and Sam Lopez, and Louis Whipple, who were ancestors of some of Petitioner #85's members identified on its 1983 membership list. No descendants were found on the 2009 list.

A third source of information, particularly for the 1870s, comes from Cora Dubois' 1939 book on the Ghost Dance of the 1870s.¹⁶ She obtained her information from informants including Emma Vilastra (Belestra), Crescent City; Jenny Scott,¹⁷ Smith River; Henry Johnson, Smith River, and a Yurok, Robert Spott. They described how the movement spread from the Northern Paiute at Walker Lake, Nevada, in 1871, to the Athabascan-speaking Tututni in Oregon, to the Athabascan-speaking Indians around Yontockett (at Smith River) and Pebble Beach (at Crescent City), and then to the Yurok, in Humboldt County, California. The informants stressed the importance of marriage connections between Indians living along Rogue River and Smith River

¹⁴ The petitioner refers to this island as Stundosson Island.

¹⁵ Kelsey stated that:

Lobus, John ("Lopez is the spelling he prefers") had rented for a cabin and for fishing from Mr. Ulrich on this island since the 1870s. Also living there after the erosion of part of the island were: Louis Whipple, Donnie Flannery, Alec Billy, Mary Winton, Sam Lopez, and Frank Ned (whom I understand to be the man they call Oregon Sam). (Kelsey 9/30/1909)

¹⁶ This movement is different from the more famous Ghost Dance of the 1890s. See also Kroeber (1904), which reinforces DuBois' account, though it concentrates more on the knowledge of Yurok informants.

¹⁷ The 1920 Federal Census for Del Norte County shows Jenny Scott living in Crescent City.

Tolowa Nation (Petitioner #85) Proposed Finding

Summary of the Criteria - Criterion 83.7(b)

for the religion's spread.¹⁸ These eyewitness informants are ancestors of the Elk Valley and Smith River Rancheria members, but none appear to be ancestors of members on the petitioner's 1983 or 2009 membership lists.¹⁹ DuBois' information shows ceremonial interaction within and between villages, mediated through marriage.

The fourth and fifth sources of information, the federal censuses and land records, provide little or no information about social interaction within communities related to the villages. The 1870 Federal census showed lineal ancestors to Petitioner #85 such as Winchuck Joe and Longhair Bob living, respectively at Lagoon (near Lake Earl) and Smith River. Information about their Indian neighbors has not been provided or found. Thus, while these sources identify some ancestors of Petitioner #85, they do not indicate social interaction indicative of an existing or evolving distinct Indian tribal community.

Evidence for years 1903-1933

The period from 1903-1933 is marked by Federal Government efforts to obtain land for the Indians living in Del Norte County, to establish rancherias at Elk Valley and Smith River, and to conduct enrollments on these rancherias. Petitioner #85's narrative relies on Federal correspondence, census materials, anthropological studies, the 1933 Census Roll applications, and modern-day oral accounts to describe the formation of the Smith River and Elk Valley Rancherias. OFA research added to this documentation with correspondence by Kelsey and other Indian Agents, 1906-1920; Federal land acquisition and allotment records (<http://www.glorerecords.blm.gov/>); Federal census data 1900-1930; BIA Elk Valley and Smith River Rancheria enrollment (1918-1937), and the 1933 Census Roll of California Indian claimants.

The Kelsey documentation shows that there were communities of people involved with Smith River Rancheria formation, but there is little or no evidence of their connection with Petitioner #85. By 1920, the Federal census shows two families ancestral to 26 percent of Petitioner #85 living in Crescent City with other Indian families who were ancestors of families at Elk Valley. A third family, ancestral to 36 percent of today's petitioner, resided at Lake Earl, about three

¹⁸ Dubois stated that:

[t]he two men who brought word [of the Ghost Dance] were Depot Charlie and Port Orford Jake. Depot Charlie could talk Tolowa, so he did not need an interpreter. His sister, or half-sister, had married this Smith River [Tolowa] man. They gave a dance at Burnt Ranch [at Yontocket, on Smith River] and later at Lagoon just north of Crescent City [a slough south of the mouth of Smith River]. (DuBois 2007, 47)

The man who started the dance at Johnson's Ranch [near the mouth of the Klamath] . . . was married to a woman from Burnt Ranch, just north of Crescent City. Her brother in turn was married to a woman from Siletz, who had learned the songs and dances up there and had taught them to her husband and his relatives at Burnt Ranch" (DuBois 2007, 49).

¹⁹ Jenny Scott is the sister of Drucker's informant George White. The 1920 Federal Census shows them both living in Crescent City. They did not appear to be neighbors of Emma Belestra, Fred Charles, or Delia Detrick, the latter two of whom are ancestral to 26 percent of the petitioner.

Tolowa Nation (Petitioner #85) Proposed Finding

Summary of the Criteria - Criterion 83.7(b)

miles west of Crescent City. The Elk Valley BIA enrollment shows the first two families enrolled at the Elk Valley Rancheria. Beginning in 1928, the application process for the 1933 Census Roll shows that rancheria leaders such as Sam Lopez, at Elk Valley, were providing affidavits in support of applicants from families not enrolled on these rancherias.

Federal correspondence shows that Kelsey was dealing with Indian communities, not just an undefined group of landless Indians. For example, by February 2, 1907, he requested authority to purchase what was to be called the Cutler-Griffin Tract (Kelsey 2/02/1907). He described the land as “about half a mile from Lake Earl and about two miles from [Smith] river.” On April 23, 1907, John Lopez submitted a petition with 37 Indian and 27 non-Indian names “remonstrating against the purchase” of the land because “said land is entirely unfitted for the home of Del Norte County Indians as it has neither river, lake, or ocean frontage” (Lopez 4/23/1907). Following a flurry of communications among Indian Affairs Commissioner Francis Leupp, Special Agent Kelsey, and Hoopa Agency Superintendent Frank Kyselka, Kyselka ascertained that the situation involved local politics which included prominent non-Indians, as well as Indians:

John Lopez, whose mother was a full blood Indian and father a Mexican, had been promised a sum of money and the choicest land in the tract to be purchased from William Westbrook if he would use his influence with the Indians to get them to ask for the purchase of that land. His father-in-law, Captain Tom, and Lopez’s seven children were also to have choice land I afterward saw John Lopez, and he reluctantly admitted that W. A. Fleming, a saloonkeeper at Smith River, had gotten him (Lopez) drunk, and had then got him to promise to use his influence with the Indians . . . Nannie Lopez, daughter of John Lopez, said that in April or May, 1907, at the request of W. A. Fleming, she signed the names of the Indians who lived on the island near the mouth of Smith River, to a paper or petition. The Indians were not present when she signed, but she thought they would all want to stay near the mouth of the river. (Kyselka 5/12/1908, 1-2)

Kyselka concluded that the Indians would indeed prefer to have some land accessible to fishing, but also some land accessible to gardening (Kyselka 5/12/1908, 5).

According to Kelsey, the end result of these inquiries “was the offer of another tract . . . one more satisfactory to the Indians This purchase is now complete and the Indians have accepted their subdivisions” (Kelsey 9/30/1909). This land is the core of what is today the Smith River Rancheria, and included the Westbrook property. By Executive Order 1495, in 1912, President William H. Taft added an uninhabited offshore island, then known as Hunter Rock.

This incident provides evidence for social community interaction around the mouth of Smith River. Most of these Indians became members of the Smith River Rancheria, and none are direct ancestors of Petitioner #85, though some are related collaterally.

GLO records between 1908 and 1929 show that the ancestors of the Elk Valley and Smith River Rancheria members received land in three townships. The only recipient, Pete Sontash, ancestral

Tolowa Nation (Petitioner #85) Proposed Finding

Summary of the Criteria - Criterion 83.7(b)

to the petitioner, represents only 2 percent of Petitioner #85's members.²⁰ By 1920, the Hoopa Valley Superintendent listed John Cooke, Pete Sontash (aka Big Flat Pete), Donnie Flannery, Eliza Aleck, Mary Catching, and Frank Hosler [Hostler], as having Fee Patents, with "20 allotments . . . held in Trust, for these Indians." He continued that "[a] few of these Indians have allotments of land, located a few miles from their homes, some of which have recently received patents in fee" (Superintendent 5/18/1920, 2). None of the others are known lineal ancestors of the Petitioner #85.

Petitioner #85's members contend that their claimed direct ancestors did not enroll with the rancherias because they were the "haves"; that is, they already owned their own land (Storr 2/11/2010). For example, the petitioner maintains that Alfred (Fred) Charles received property upon which to live after Del Norte County ordered him to remove his shack at Pebble Beach (Sligh 2/12/2010). Similarly, the petitioner maintains that the ancestors of the Gorbets owned land near Lake Earl. The evidence did not support this rationale.

Kelsey showed Alfred Charles (aka Freddy Charley, of the Wharf Charlie line) living in Crescent City in 1907 (Kelsey 2/2/1907); the 1920 Federal Census shows him and his family residing in Crescent City along B Street, with neighbors Seymour, Balestra, and petitioner ancestor Detrick (Albert). They and their descendants were identified as members of the Elk Valley Rancheria on the BIA Censuses, from 1918 through 1937. The petitioner describes this Crescent City grouping, and its geographic location, as the "B Street Rancheria." According to the petitioner, the Indians were located on land owned by Jakob Marhoffer (Sligh 2/12/2010). However, neither Petitioner #85 provided, nor has Department research found, evidence that these individuals were on Federal land. Both the 1920 and 1930 Federal Censuses for Del Norte County show these Indians as "R", or renters. While it is possible that these Indians were renting from property owned by Marhoffer, Department researchers found no further information on property status for Marhoffer in Crescent City.²¹

The Federal Census shows that in 1920 the ancestors of the Gorbets (Haines-Roberts) were living on property owned by Eli Collins, the non-Indian husband of Annie Collins (formerly Annie Roberts), in the Lake Earl Precinct, between Crescent City and Lake Earl. By 1930, Annie's son-in-law Norman Gorbet and his family were living on rental property in the same precinct. Elk Valley Indians George White and Etta Lopez were witnesses to the 1933 Census Roll applications for them. Neither the petitioner provided, nor did Department researchers find, further information on land belonging to Gorbet or other Haines-Roberts descendants.

Thirty-six percent of those on the 2009 Petitioner #85's list claim descent from the Haines-Roberts line, and 26 percent claim descent from the Wharf-Charlie and Albert lines. Thus, these family lines living in and around Crescent City represent over three-fourths of the 2009 members. However, the Department researchers were unable to characterize further the land

²⁰ GLO records for 1908 show Jim Kenel and John Cooke (Township 17, Range 2 East, along Smith River). Land records for 1919 show Geneva Mattz, Martha Charlie Brooks, Jimmie William Brooks, and James William Brooks allotted on land southeast of Elk Valley and Smith River, (Township 13, East of the Humboldt Meridian and southeast of Crescent City and Elk Valley); Emma Janetting and Pete Sontash in (Township 15, Range 2 East).

²¹ The 1920 Census for the Town of Crescent City itself shows Jacob Marhoffer as a property owner, but provides no further information on the nature of the property held.

Tolowa Nation (Petitioner #85) Proposed Finding

Summary of the Criteria - Criterion 83.7(b)

statuses of Marhoffer or Collins. More importantly, it is not clear from information available to the researchers whether, or how, such land status may have affected possible social interaction. Thus, while land status may have differentiated these families in some way from those of the Elk Valley Rancheria, evidence on land status or other interaction is insufficient to show the existence or evolution of an Indian tribal community distinct from the rancherias during this time period.

In 1920, the Hoopa Valley Agency superintendent maintained that the Indians at Smith River were:

earning their living, sending their children to a public school, and have all the rights and privileges of citizens and are under the care and protection of the laws of the State of California. Many of their homes still compare favorably with those of their white neighbors. (Hoopa Valley Agency Superintendent 7/29/1920)

He added “[w]e have a few of the children in school from that band whose home conditions are such as to make it impossible for them to be educated elsewhere” (Hoopa Valley Agency Superintendent 7/29/1920). His observation suggests that the Federal Government was sending neither the Indians living on the Smith River or Elk Valley Rancherias, nor other Indians residing elsewhere in this area, to Bureau schools on any routine basis. The Indians were attending public schools within the county. The letter, thus, indicates that those who would have been residing on the rancherias would not have differed from any non-rancheria members in Indian school attendance during this time. This information, combined with the federal census evidence above, reveals both petitioner ancestors and Elk Valley Rancheria members living near one another. However, it fails to show that ancestors of Petitioner #85 were evolving as a distinct community at this time.

Evidence for years 1934-1949

This period marked the beginning of two significant events that involved Indians in Del Norte County: the Indian Reorganization Act (IRA) of 1934, and the appearance of the Del Norte Indian Welfare Association (DNIWA). Petitioner #85’s narrative pertaining to the years between 1934 and 1949 portrays DNIWA as representing Indian groups enrolled at Elk Valley Rancheria, and others living near Crescent City. The petitioner claims that they were evolving as a distinct Indian tribal political entity through the Del Norte Indian Welfare Association (DNIWA). The petitioner bases its account on modern-day oral accounts, and provides no documentation as to DNIWA’s formation. The narrative also refers to undocumented modern-day oral accounts and newspaper articles to describe informal social life and cultural revitalization during this period. Department researchers examined recollections from this time gathered from interviews conducted during their site visit in 2010, as well as Federal census material, BIA enrollments, and BIA correspondence to document further DNIWA’s activities and informal social interaction. Researchers also consulted BIA enrollments conducted by Henry Roe Cloud in 1939, as part of the IRA enrollment.

Section 5 of the Indian Reorganization Act (IRA), June 18, 1934, authorized the Secretary of the Interior:

Tolowa Nation (Petitioner #85) Proposed Finding

Summary of the Criteria - Criterion 83.7(b)

to acquire . . . interest in lands . . . within or without existing reservations, including trust or otherwise restricted allotments whether the allottee be living or deceased, for the purpose of providing land for Indians. (48 Stat. 984)

Section 19 of the Act included as Indian “all other persons of one-half or more Indian blood” (48 Stat. 988). John Collier’s Circular 3134 clarified that these Indians did not necessarily have to be enrolled with an Indian tribe or on an Indian reservation, as long as the “one-half or more Indian blood” could be established. On November 26, 1938, Assistant Commissioner of Indian Affairs F. H. Daiker requested Special Agent Henry Roe Cloud’s assistance in compiling a roll of such Indians in Del Norte County “eligible for land assignment and organization under the Indian Reorganization Act” and “proposed Resighini Rancheria on the Lower Klamath River” to settle them (Daiker 11/26/1938, 1).

Department researchers examined the Roe Cloud censuses to evaluate Petitioner #85’s claims that the ancestors from the Wharf Charlie line had obtained land through other means, and were, thus, ineligible for enrollment on the rancherias. Roe Cloud’s March 6, 1939 report listed 57 eligible individuals from Del Norte County.²² The enrollments show that two families, ancestors of about 26 percent of those included on the 2009 petitioner membership list, were enrolled on the Elk Valley Rancheria, but had neither land allotment nor residence there. They were, therefore, eligible to apply for land on Resighini, if they renounced membership on the Elk Valley Rancherias. There is no evidence that they did so.²³

Roe Cloud observed three general categories of Indians living in the area, defined by whether they lived on the rancheria with which they were enrolled, lived on a different rancheria from the one with which they were enrolled, or were what he referred to as “floaters, with no known

²² According to the Report, out of a total of 316 “[California] Indians of one half degree Indian blood or more who were listed allotment, annuity and identification number,” 158 on Bear River, Crescent City, Eel River, Smith River and Rohnerville Rancherias had “formally voted against the reorganization act of June 18, 1934” and were ineligible to take part in this program. The remaining 158 “were not permitted to vote” but were . . . included on his list: because they had not resided on the reservation, and as individuals could not vote. Of these, 57 were residing in Del Norte County, including two families ancestral to the petitioner.

²³ On June 8, 1939 O.M. Boggess submitted a list of five residents “whom we have definitely assigned land . . . on the Resighini land purchase” and “who are now eligible to vote on the constitution and bylaws” of the Resighini Purchase. While two of these are ancestors of those listed on the petitioner’s 1983 membership list, none are ancestors of those on the 1996 or 2009 lists, and none were ever finally enrolled at Resighini. These included John Lopez Jr., Bessie Lopez, William Frye, Harry Scott, and Catherine Scott (Boggess 6/08/1939). John Lopez and Bessie Lopez were ancestors of the 1983 petitioner and of Rancheria members. BIA correspondence shows, however, that their applications were not approved as of 1957, and none were residing there (Hill 9/26/1957). Instead, BIA records showed 12 other householders residing there (Gordon 9/04/1957), none of whom Department researchers has found to be an ancestor of either the petitioner or rancheria members. The only trace of ancestors of the petitioner or of the two rancheria ancestors is a 1957 registry that lists applicants Sam Lopez, Janet Butrick, and Emery Mattz, all of whom were disapproved. Lopez and Butrick were listed as on the “Elk Valley assignment” (Hill 9/26/1957).

Tolowa Nation (Petitioner #85) Proposed Finding

Summary of the Criteria - Criterion 83.7(b)

address.”²⁴ He enrolled the first two categories of individuals, but did not include applicants from the third category. The two families living at Crescent City were neither enrolled on another rancheria nor were “floaters.” From 1920 through 1930 they were enrolled at Elk Valley Rancheria, lived on rented property in Crescent City, and were not recorded by Roe Cloud as owning any other kind of property. The Roe Cloud enrollment thus provides no further direct information on two of the three families discussed above, regarding obtaining land through other means, nor does it provide further direct or indirect information on social interaction or other indication of a distinct community for the petitioner’s claimed ancestors for this time period.

Recollections of social interaction in the 1940s, collected from interviews conducted in February 2010, describe social interaction among Petitioner #85’s claimed ancestors, as well as with rancheria members. These interviews recalled revitalized ceremonial activities and childhood events in the 1940s. Interviews indicate that women such as Barbara Jane Eller had begun recording Tolowa songs and dances, and attempting to make them important to Indian social life. According to one interviewee:

[Barbara Jane Eller was inspired by Sam Lopez’ singing]. So in 1946 or 1947, the first time they came out with record players, she traveled all over with this recording disc machine and recorded Indians all around. She recorded Indians up the river, and Indians in Crescent City, Indians at Smith River – wherever she can get agreement that she would not sell or share these with anybody, except with the family of the people who would let her record. (Sligh 2/12/2010)

Others included “the Moorehead Brothers, the Richards. . . there were several men when I grew up that were singers” (Storr 2/11/2010). The Mooreheads and Richards were related to families enrolled on the Smith River Rancheria.

Sam Lopez was the leader of the Elk Valley Rancheria, while Ms. Eller was a descendant of Fred Charles, who was listed on the Elk Valley Rancheria with Roe Cloud’s enrollment, and therefore without allotted land. Interviewees also reported that others were sponsoring dances privately at their houses during the 1940s and 1950s. They claimed that these events included both Petitioner #85’s ancestors and rancheria members.

Such accounts are important because these occasions appear to involve both Petitioner #85 members and rancheria members in a revitalization effort. As one interviewee reported, these were not continuations of older dances, but “were a newer type ceremony, because we didn’t want to lose it [i.e. the culture]” (Storr 2/11/2010).

²⁴ Roe Cloud did not distinguish those on his enrollment by these categories, but observed only that:

[o]f necessity, these Northern California Indians had become more or less roving people. They had become seasonal wage earners and seasonal fishermen, moving from fishing grounds to lumber camps, to urban centers and back again to rancherias . . . A rough classification of Indians found on these rancherias can be made of those who are (1) floaters, (2) temporary dwellers in the given rancheria but do have permanent homes and lands on some other rancherias, and (3) actual residents owning homes and lands on the given rancherias.

Tolowa Nation (Petitioner #85) Proposed Finding

Summary of the Criteria - Criterion 83.7(b)

Interviewees also reported interaction among the ancestors of Petitioner #85 which involved participation in non-Indian civic organizations, as well as in Indian revitalization activities. As one interviewee maintained:

[t]hey were always involved in the community – the Indian community as well as a white community – because Grandpa [Norman N. Gorbet] also belonged to the Horseman’s Association, along with the VFW. My parents both belonged to the VFW. (Storr 2/11/2010)

Other recollections describe children playing with other Indian children from related families and neighbors, often when parents were visiting or at various civic meetings, square dances, and fund raisers for DNIWA. One of the sites where children would visit, with their parents, was what they referred to as the Gorbet property. According to the interviewees “[t]he square dances would happen at John Green’s house, they would happen at the Gorbet’s place out on the ranch – the Gorbet Ranch. So the kids would all play outside; we would all play outside when the parents were dancing” (Sligh 2/12/2010). Again, while interviewees mentioned land upon which Gorbet resided, Department researchers found no record of any such land. Such records would be helpful in better determining where and when these events may have occurred, as well as their relationship with the rancherias.²⁵

Regarding DNIWA, Petitioner #85 maintained it formed between 1932 and 1936 under the leadership of Sam Lopez, from Elk Valley.²⁶ Its impetus came from Elk Valley and Crescent City as the result of a leadership split with Indians at Smith River, after the latter voted against the IRA (Collins 1998, 63-64).²⁷ However, the petition narrative provides no evidence in the form of meeting minutes or correspondence indicating any activities, and stated that no other information was available. Petitioner #85 provided only DNIWA meeting attendance lists from 1949 through 1968. Other documentation obtained through Department research included information and correspondence from the Central Classified files for 1941 and minutes of meetings and correspondence from approximately 1952 through 1977.

In 1941, DNIWA President Norman Gorbet had protested the planned closure of a local school. Gorbet wrote Indian Affairs Commissioner John Collier asking for information concerning the closing of “the school on the Smith River Indian Reservation” and inquired into “what possibl[y] could be done in keeping our Indian school” (Gorbet 6/11/1941, 1). Three years earlier, maintained Gorbet, “we wanted our children to attend the Smith River Union School because of the Indian school being so unfit for the pupils” (Gorbet 6/11/1941, 1). Following construction improvements on the school by the BIA, however, the group apparently changed its position and wanted the children to remain at the school, and not be transferred to the Smith River Union School, a nearby public school.

²⁵ This property could possibly be the land held by Eli Collins, but information is presently insufficient to draw such a conclusion.

²⁶ Neither the petition nor other documentation showed when DNIWA began. Some say as early as 1928 (Storr 2/11/2010); the petition narrative gives dates of 1932 and 1936.

²⁷ On June 14, 1935 Crescent City (Elk Valley) voted to approve the IRA 6 to 0; Smith River voted against the IRA 31 to one (Haas 1947, 14).

Tolowa Nation (Petitioner #85) Proposed Finding

Summary of the Criteria - Criterion 83.7(b)

Norman Gorbet's inquiry appeared to respond to what one BIA official considered community concern for a teacher whose job would be lost with the transfer (Myers 7/14/1941). While Gorbet articulated this concern, the BIA maintained that he was:

not a resident of the Smith River School District and [did] not entirely voice the sentiment of the Indian parents of that District on the subject [of busing 11 students 3 additional miles to the Union school].²⁸ (Myers 1/29/1942)

Moreover, the Hoopa Agency BIA had observed that:

one member of the Smith River School Board is an Indian by the name of Gobel Richards who has children in school and receives all due consideration from other members of the Board in matters pertaining to their duties. (Myers 7/14/1941)

Thus, evidence for this time does not support the assertion by Petitioner #85 that DNIWA provided leadership over an evolving entity that included both the ancestors of Petitioner #85 and the Smith River or Elk Valley Rancherias, as indicated above. Petitioner #85 maintains that Norman Gorbet was residing on land he owned south of Smith River, near Etchulet, and therefore closer to Crescent City. While he may have been communicating concerns from some members in the Smith River community, neither he nor his family was enrolled on either the Smith River or Elk Valley Rancherias. Thus, further documentation provided by the petitioner would be important to clarifying DNIWA's status during this time.

Evidence for years 1950-1982

The events that mark this period include the continuation of DNIWA, the planning, implementation, and aftermath of Federal termination, and reports of further informal interaction and cultural revitalization activities. DNIWA membership composition shows that participants who were not enrolled with the rancherias interacted with participants who were. Moreover, those most actively involved in DNIWA appeared to be from families not enrolled on the Elk Valley or Smith River Rancherias. They were either ancestors of, or members of, the petitioner's leadership for the Federal acknowledgment petition endeavors in the early 1980s. Nevertheless, membership included both rancheria, as well as non-rancheria, Indians, and thus was not distinct from the rancheria communities. Those not enrolled on Smith River or Elk Valley interacted with those from the rancherias through advocacy for services, facilities maintenance, and consultation with pan-Indian associations. The term advocacy broadly refers to any activity that promotes the health, education, economic standing, political standing, or cultural revitalization of a constituency. DNIWA participation in the Federal termination planning process of the 1950s and 1960s suggests that the BIA and rancherias separated DNIWA's roles from the rancheria governance that was developing at the time.

In understanding DNIWA as evidence about community, it is instructive, first, to review membership, and then to review how its activities affected Petitioner #85 and rancheria ancestors. There is no evidence of a membership list. Thus, any discussion of DNIWA

²⁸ Federal Census information for 1930 shows him renting property in the Elk Valley Precinct, near Crescent City.

Tolowa Nation (Petitioner #85) Proposed Finding

Summary of the Criteria - Criterion 83.7(b)

membership of this time needs to be based on attendance records. Out of a total number of 150 people who attended from 1940 through 1968, Department researchers counted only 18 members who attended five times or more throughout those years. The median number of meetings attended is one meeting, with an average of two meetings, indicating that most people came to a meeting one or two times, and left whatever business to those who attended more frequently. Thus, those who attended frequently could be considered highly active.

From among Petitioner #85's claimed ancestors, those attending frequently included Alfred Charles, Barbara Jane Charles, Margaret Eve Charles, James Lawrence Bommelyn, Loren James Bommelyn, Eunice Henry Bommelyn, Norman N. Gorbet, Charles Davis Bowen, Janice Martina Bowen, Patrie Gorbet, and Sadie Roberts. Those attending frequently from the Smith River or Elk Valley Rancherias included Bertha Grimes, Amelia James, Agnes Tom, Ethel Scott, Etta Tom, Sam Lopez, and Edward Richards. In short, those who were Petitioner #85 ancestors took the initiative but did so in conjunction with a significant number of persons from the two rancherias.

Second, DNIWA's involvement in the implementation of Federal termination of Indian tribes, and its interaction with the evolving rancheria governing bodies, provides further information on the interaction between membership in the Smith River and Elk Valley Rancherias and the ancestors of Petitioner #85. In response to the Congressional plans for the implementation of termination of Indian tribes in 1952, DNIWA Chairman Sam Lopez and Secretary Betty Hostler (both from Elk Valley) proposed that:

[T]he Del Norte Indian Welfare Association for all purposes in relation to the relinquishment program be officially recognized as the official representative and spokesman for the Elk Valley Rancheria located near Crescent City and the Smith River Rancheria located at the mouth of Smith River. (Hostler 9/25/1952)

It did not appear that either rancheria had councils who could decide on DNIWA's role, but a letter suggested that DNIWA members from both rancherias wanted DNIWA's involvement in the termination planning process. In this letter Betty Hostler explained that "the Indians on the two Rancherias desired to be represented by the Del Norte Indian Welfare Association rather than separate organizations" and each rancheria would elect committees to represent each rancheria (Hostler 9/25/1952). Lopez was recognized by both DNIWA and Elk Valley Rancheria members as an important representative.

On October 2, 1952, Sacramento Area Superintendent L. M. Hill declined DNIWA's offer to represent the rancherias, and stated that "this office must work directly with the people of each separate rancheria to reach the solutions to their respective problems" (Hill 10/2/1952). The BIA then proceeded to establish governing bodies at each rancheria, and as mentioned in the discussion of previous acknowledgment, considered DNIWA an advocacy organization, not an Indian tribal entity.

Involvement of DNIWA in termination activities came to an end on October 13, 1952, at a meeting at Guschu Hall, when the Indians at Smith River established the Howonquet Indian Council. By April 26, 1955, Elk Valley had drafted a Constitution and By-laws that "generally

Tolowa Nation (Petitioner #85) Proposed Finding

Summary of the Criteria - Criterion 83.7(b)

follows the form adopted by the Smith River group and appears to suit the needs of the Elk Valley community” (Singer 8/26/1955).

After 1952, DNIWA meeting minutes showed a shift in focus away from termination planning and more toward advocating for educational funds for Indian children, reporting concerns to the BIA about developing a viable water supply for Smith River, and extending county roads (DNIWA Meeting Minutes 2/1/1954-2/10/1954). Also discussed was contributing to a fund for maintaining a cemetery at Howonquet; advocacy for keeping the hospital and Hoopa “out of the hands of the public health Association of Hoopa” (DNIWA Meeting Minutes 5/3/1954); controlling non-Indian trespass on the Smith River Rancheria; paying for repairs on the community hall (DNIWA Meeting Minutes 11/1/1954); and generating political support for non-Indian Congressional candidates (DNIWA Meeting Minutes 11/1/1954).

DNIWA participants made clear the boundary between Howonquet Indian Council and DNIWA regarding political influence. In one example, a non-Indian requested permission from DNIWA to collect driftwood on Indian lands for noncommercial purposes. A motion seconded and approved would allow these individuals to collect driftwood “providing the driftwood was not used commercially or for firewood.” However, Andy Whipple, chairman of the Howonquet Indian Council “raised the question of the rights of the [DNIWA] to give such a permit. . . . It was decided to take further action at the next council meeting” (DNIWA Minutes 8/2/1954). Meeting minutes indicate neither further action nor discussion on this matter.

Another example shows that DNIWA, as an organization, maintained independence from the Howonquet Council. Debates were held at meetings as to whether trusteeship of the Community Hall “should be picked from the Howonquet Council members or from the [DNIWA] membership.” A vote favoring the latter option passed unanimously (DNIWA Minutes 11/1/1954). The seven trustees elected at that meeting included Sam Lopez, Richard Lopez, John Green, Bertha Stewart, Ernest Scott, and James Bommelyn. Bertha Stewart was enrolled at Smith River; Sam Lopez was at Elk Valley, and John Green, Richard Lopez, and James Bommelyn were listed as members of Petitioner #85 in 1986. Thus, while the membership among the elected trustees overlapped, the DNIWA members considered the organizations and their functions separate.

At a regular meeting on December 6, 1955, the minutes reported issues regarding the Association’s purpose, and “several problems of the organization.” No documentation indicated what these problems were. A week later, a special meeting was held to “discuss the disbandment of the Del Norte Indian Welfare Association.” The minutes show that “Audree Bowen made the motion that we keep the Del Norte Indian Welfare Association for the purpose of helping other families in Del Norte. Seconded by Charles Whipple . . . carried” (DNIWA Meeting Minutes 12/13/1955).²⁹ No other information is available specifically on this issue, but DNIWA was definitely no longer involved directly in rancheria business.

²⁹ Charles Reginald Whipple is the younger brother of Howonquet Indian Council President Andy Whipple, mentioned above. Both were Smith River Rancheria members in 1937; both appeared on the Distribution and Reinstatement lists. Audree Dorene Bowen was part of the Haines Roberts line mentioned above, and a direct ancestor of Petitioner #85.

Tolowa Nation (Petitioner #85) Proposed Finding

Summary of the Criteria - Criterion 83.7(b)

While both the BIA and the rancheria Indians sharply separated the roles of the developing governing bodies at Elk Valley and Smith River Rancherias from DNIWA, members from the two rancherias cooperated closely with Petitioner #85 ancestors who were part of DNIWA on several efforts. Throughout DNIWA's operation, there was a close connection with the Howonquet Indian Council that was the precursor of the modern-day Smith River Rancheria. Members all attended meetings frequently and provided each other financial assistance (DNIWA Minutes 1/16/1957). Throughout the 1950s members of the Howonquet Indian Council attended DNIWA meetings regularly, either in an official or individual capacity. Sometimes they requested help in approaching the Indian Health Service for water development, and in dealing with the BIA for continued road development and expansion of their rights-of-way (DNIWA Minutes 2/10/1954). DNIWA also assisted the Howonquet Indian Council by helping to pay for travel expenses for Smith River members who were testifying on Senate resolutions leading up to the termination acts (Smith and Butrick 9/16/1954).

Following the termination of the Smith River and Elk Valley Rancherias in the 1960s,³⁰ Federal records show that DNIWA's activities shifted to California claims activities. Under the signature of James Bommelyn, DNIWA Secretary Audree Bowen sent letters of inquiry to Attorney General Robert F. Kennedy regarding the Claims Commission's voting (Bommelyn 1/30/1964). The Associate Commissioner of Indian affairs responded that "the Commission has the authority to make a final determination on the proposed compromise settlement of the California case" (Jenkins 3/18/1964). Records indicate no further action by DNIWA, nor is there indication of any further participation in the claims activities.

Petitioner members maintained that in the 1970s DNIWA obtained grants to operate a food distribution program and a cultural demonstration program. Department researchers did not investigate program records or funding sources, but interviewees mentioned obtaining Comprehensive Employment and Training Act (CETA) grants, funded through Humboldt State University, to hire local laborers to upgrade and maintain a water system and maintain a site for dances. Smith River Rancheria members were hired under this program (Mathews 2/11/2010).

The petitioner maintains that the Northern California Indian Development Council (NCIDC) later assumed many of these activities, and today administers about 125 on-the-job training placements through CETA, which are intended to get unemployed Indians in Del Norte County into the local workforce. NCIDC also administers the Community Service Block Grant through Public Law 91-82 for California. Under this block grant NCIDC coordinates Federal housing development for all the rancherias, most of whom would not be able to operate such a program on their own. They still receive block grants on behalf of the rancherias to administer programs for the elderly and for fire control (Matthews 2/11/2010).

The petition maintains that DNIWA evolved into Petitioner #85 early in the 1980s. No documentation indicates any substantial DNIWA activity after 1983. However one petitioner member wrote that:

³⁰ By July 16, 1966, 48 names appeared on the final Distribution List for Elk Valley (31 FR 9685) and by July 25, 1967, 115 names appeared on the final Distribution List for Smith River (32 FR 11089-11090). None were ancestors of Petitioner #85.

Tolowa Nation (Petitioner #85) Proposed Finding

Summary of the Criteria - Criterion 83.7(b)

Del Norte Indian Welfare Association (DNIWA) is still in existence, albeit not too active anymore. They meet as needed. No regular schedule. Tolowa Nation cooperates with DNIWA in any way we can. (Storr 8/15/1997)

Department research revealed that DNIWA's membership included both Petitioner #85's ancestors and members of Elk Valley and Smith River Rancherias. Research also shows that DNIWA members cooperated with the evolving Smith River and Elk Valley Rancheria governing bodies for various activities. While Petitioner #85 maintains that DNIWA functioned as an Indian tribal organization from the 1930s through the 1960s, available evidence shows that the members of both DNIWA and the rancherias considered DNIWA as an organization whose advocacy role differed clearly from the evolving governing councils at Smith River and Elk Valley, while the membership of DNIWA overlapped with the two rancherias.

Social Interaction 1950-1982

Interviewees maintained that the same kinds of civic and DNIWA activities, and social life, that they recalled for the early 1940s continued through these years. Informal visits to the Bowen-Gorbet ranch continued (Storr 2/11/2010). The same is true for square dancing (Sligh 2/12/2010) that also involved Elk Valley residents such as John Green.³¹ Other interviewees described community interaction through springtime smelt fishing, as well as extended vacations on the beach near Lake Earl (Storr 2/10/2010). On these occasions, Petitioner #85 members would interact informally with rancheria members, as well as with each other.

According to 2010 interviewee recollection, many of the informal activities became more intermixed with revitalization of the traditional dances. According to the petitioner, Sam Lopez continued encouraging members to organize dances. Petitioner members recalled, during the 1960s and 1970s, the introduction of demonstration dancing (Coney and Brooks 2/11/, 2010). Demonstration dances differed from ceremonial dances. The former are more generalized, and require less skill and background, but are helpful for training beginners. As one interviewee explained:

It's done a lot for young people that – in ceremonies there are strict protocols. Things you should do and things you should not do. The demonstration aspect kind of allows . . . the people that can dance and want to dance and learn the stuff without fear of breaking traditional rules – something that would harm the ceremony. I think it's good because it gives the kids a good chance to hone their dancing skills, so when a ceremony does come up they can go and say "I would like to dance there." (Storr 2/10/2010)

Petitioner #85 members maintained that by the early 1980s, under the leadership of Loren Bommelyn, the petitioner obtained grants to begin a Brush Dance at his home land at Nelechundun (Coney and Brooks 2/11/2010).

³¹ While John Green was on the 1966 Elk Valley Distribution list, he was not listed on any of the BIA rancheria enrollments 1918-1937 available to Department researchers, and was apparently accepted after 1937.

Tolowa Nation (Petitioner #85) Proposed Finding

Summary of the Criteria - Criterion 83.7(b)

Thus, some of Petitioner #85's members, and their ancestors, interacted with Elk Valley and Smith River Rancheria members, both formally, through DNIWA, and informally. However, evidence for this time is insufficient to show the existence or evolution of a community distinct from these rancherias and ancestral to the petitioner.

Evidence for years 1983-2010

The events shaping this period include the judgment in the *Tillie Hardwick v. U.S.* court case and the growth and development of the Elk Valley and Smith River Rancheria governments, the ensuing Federal Acknowledgment Process 1983-1986, and the opening of the Smith River Rancheria rolls in 1991. The evidence collected by the Department shows that Petitioner #85 continued to maintain informal social interaction with members of the Elk Valley and Smith River Rancheria members, as well as among each other. The Federal acknowledgment process, begun in 1982, shows that Petitioner #85's ancestors, and their descendants active in DNIWA, took the lead in pursuing Federal acknowledgment. The enrollment process for Federal acknowledgment shows that these leaders attempted to pull together a membership from a wider group of people than involved in previous years, located primarily in Del Norte County, who identified themselves as Tolowa descendants. The Smith River Rancheria membership expansion, 1991-1996, shows that some families active in the beginning of the Federal acknowledgment process in 1983 joined Smith River Rancheria between 1991 and 1996. Other members listed with Petitioner #85, however, neither enrolled nor remained with the petitioner. Department researchers have been unable to ascertain their whereabouts.

The current Petitioner #85 began in 1982 when the petitioner "adopted the Tolowa Nation Tribal constitution and elected a 12-member Tribal Council, the Tolowa Nation Tribal Council." Petitioner #85's members recalled that soon thereafter, around 1983, a group assembled to develop the petition for Federal acknowledgment (Giovanetti 3/17/2010). One of the members recalled some of the leaders:

There was Barbara Eller – the late Barbara Eller – there was Margaret Mattice; Eunice Bommelyn; Sheryl Steinruck; Loren Bommelyn, myself; Audree Bowen; Paul Winton Jr. – he's passed on now – most of those people were officers at one time or another – Charlene Storr; her sister Junie Mattice; Jan Bowen, who recently passed away; the late Ada Richards. (Giovanetti 3/17/2010)

With the exception of the Lopez families, these individuals had been active in DNIWA and were not known to be rancheria distributees.

Giovanetti described a recruitment process of locating Indians of Tolowa descent by first interviewing older relatives. Some of these elders yielded as many as 200 names (Giovanetti 3/17/2010). Loren Bommelyn had contacted families such as the Frys, from Curry County, Oregon, asked them join the Tolowa Nation, and if possible enlist descendants of Athabaskan-speaking Indians originally residing in Oregon (Fry 2/12/2010).³² Petitioner #85 members also consulted lists such as the 1933 Census Rolls for potential members.

³² This family had moved from Curry County to Del Norte County in 1953 to look for work, and stayed in Del Norte County.

Tolowa Nation (Petitioner #85) Proposed Finding

Summary of the Criteria - Criterion 83.7(b)

The 1983 list contained 130 names of adults; the 1986 list contained 338 names, including children.³³ Department researchers compared the 130 names on the 1983 list with the 338 on the 1986 list, and found that the 96 percent of the former is shared with the latter, while 37 percent of the 1986 list is shared. The discrepancies imply an unstable membership.

The pool of individuals from which these members were recruited is primarily from Northern California. Of the total 1986 membership, 96 percent were residing in California, Oregon and Washington. California accounted for 87 percent of the total. Within California, Crescent City, Fort Dick, and Smith River accounted for 59 percent of the total California. Eureka and Arcata, in Humboldt County, account for an additional 20 percent of the total within California.

In 1987, Article I, Section 1(b) of Smith River Rancheria's constitution had expanded membership eligibility to include "all siblings of those individuals listed as distributees on the Distribution Plan of July 28, 1960, as well as the lineal descendants of such siblings" (Smith River Rancheria Constitution and Bylaws 1987). On May 14, 1991, the Howonquet Indian Council formally adopted an Enrollment Ordinance that broadened eligibility to include descendants of collateral relatives, as well as direct descendants, of the original distribution list members. It defined a base roll as those "listed on the plan of Distribution of Assets of the Smith River Rancheria, July 28, 1960 and their lineal descendants." In addition, Indians other than those on the base roll could enroll if they could "prove that they [were] a sibling or the lineal descendant of a sibling of a Distributee."

Known as the "Smith River Rancheria Enrollment Act," this ordinance affected both the Smith River and Petitioner #85 members. From the Smith River Rancheria resolutions and meeting minutes Department researchers compiled a list showing that from July 23, 1991, to December 17, 1996, 712 new members were admitted to what Department researchers counted as a rancheria membership that had consisted of 198 distributees and their descendants. By 2009 the membership had increased to 1,949. Included among these new members were some of the petitioner families mentioned by interviewees as having been active in the Federal acknowledgment endeavors from 1982 through 1986 (Giovanetti 3/17/2010).

According to a former petitioner member, news of the opportunity for Smith River enrollment traveled through family lines. He recalled that he heard about the enrollment opportunity through two cousins who were enrolled at Smith River. Once he applied, the cousins spoke on his behalf to the rancheria governing body (Giovanetti 3/27/2000).³⁴

³³ See Introduction re Petitioner's claimed ancestors. These comparisons are based on examination of surnames only, and do not factor in deaths or possible name changes due to marriage. Nevertheless, with only a 10-year span of time, they can still provide a general idea of the scale of differences between the lists.

³⁴ Giovanetti maintained that:

I had two cousins who approached me and said that there is a change. So, I don't think it was, like, broadly disseminated. I never saw the newspapers or anything down here [in Arcata, where he works]. So I think it was just word-of-mouth. So, of course for tribal governments, there's nothing they have to put anything in the newspapers, or anything like that. (Giovanetti 3/17/2010)

Tolowa Nation (Petitioner #85) Proposed Finding

Summary of the Criteria - Criterion 83.7(b)

Petitioner #85 members credit most of their membership decrease from the 338 people on the 1986 list to the 166 names 1996 list to its members' joining Smith River. The members maintain that the reason for these people joining was to gain access to education, health, and other services. As one petitioner leader stated, "[w]e encourage people that if they need the money, the support, or the education, or whatever the support, that they should go ahead and try to become a member" (Sligh 2/12/2010). None of Petitioner #85 members mentioned any reason based on heritage, descent, or history for not joining Smith River. One interviewee's decision to join Smith River was predicated on guaranteeing educational and other assistance for himself and his family (Giovanetti 3/17/2010).³⁵ Another interviewee considered a decision to join Smith River to be reasonable, considering that both Petitioner #85 and the rancheria members are close in kinship, and in some cases grew up together. The interviewee summarized the position in the following account of a conversation with the Smith River Rancheria Council Chair Kara Brundin-Miller:

Kara and I did talk within the last year some time . . . and she was asking me about Tolowa Nation. And I told her "the best thing that would be is if Smith River would just take Tolowa Nation in whole." Because we all know we're related. We all know what the bloodlines are. Just take us as a whole. But when the first time the Smith River wanted to open up their rolls, they wanted us to give them all of our records, which probably would have been okay if they had taken the entire membership. But if we didn't have the entire membership there, then why give them the records? We needed those records for documentation, and we needed the records for those that were left behind. (Storr 2/11/2010)

The interviewee maintained that she knew Ms. Brundin-Miller well, since she babysat Brundin-Miller's children when she was younger. Ms. Brundin-Miller is from the Haines-Brundin line, and was on the 1983 petitioner membership list. The interviewee is a descendant of the Haines-Roberts line, and is related to Ms. Brundin-Miller through their grandmother Annie Haines (Storr 2/11/2010). The example thus suggests that some Petitioner #85 members have maintained close relationships with former petitioner members who enrolled with the Smith River Rancheria.

However, a comparison of both Petitioner #85's 1986 and 1996 membership lists with a list compiled by the Department researchers of those accepted into the Smith River Rancheria from July 23, 1991, to December 17, 1996, shows that not all of those who withdrew from Petitioner #85's membership joined Smith River. Moreover, a comparison of Petitioner #85's 1986 and 1996 lists reveals a high turnover that indicates, first, that many members on the former list

³⁵ Giovanetti maintained that from his standpoint, at least, knowledge of the Smith River enrollment ordinance was not widespread:

For me personally I found out that Smith River had changed their enrollment criteria—eligibility standards. For me that was a no-brainer, I just thought I had to enroll; I can't take a chance on jeopardizing my own children's' future enrollment rights with a recognized Indian nation. To me that would just make no sense whatsoever . . . It would've been too agonizing, I think, for me – because we have to look out for ourselves. It's too much of a long shot to wait for the recognition process to finish what it has to do. (Giovanetti 3/17/2010)

Tolowa Nation (Petitioner #85) Proposed Finding

Summary of the Criteria - Criterion 83.7(b)

neither transferred to Smith River nor remained with the petitioner. Second, the turnover indicates that the petitioner engaged in a number of recruitment drives, and did not consist of a stable membership.

Of the 338 on Petitioner #85's 1986 membership list, only 68 people, or 20 percent of the 1986 petitioner membership, appear among the 712 who were accepted into Smith River between July 12, 1991 and December 17, 1996. The following table summarizes the data:

1986 Petitioner	Number	Percentage of 1986 Petitioner
Total 1986 Membership	338	100
1986 Members Accounted for in 1996	162	48
Members Accepted into Smith River by 1996	68	20
Members remaining on 1996 Petitioner List	94	28
Members Unaccounted for in 1996	176	52

To find what happened to those on the 1986 list who did not join Smith River, researchers compared the 1986 and 1996 lists from Petitioner #85, and found that 94 of those on the 1986 list remained with the petitioner in 1996. When the researchers subtracted both the 68 who joined Smith River by 1996 and the 94 who remained with the petitioner from the 338 members on the 1986 list, the result was 176, or 52 percent of the 1986 membership, who neither remained with the petitioner nor was accepted into Smith River. In effect, neither the petitioner provided, nor could the researchers discover, an accounting for over half of the 1986 petitioner membership for this time.

One explanation was that some of the members remaining on the 1996 membership list may have been dually enrolled by 1996 or may have been accepted into Smith River between 1996 and 2008. Researchers examined 2009 Smith River enrollment, and found the names of 46 more individuals who had been on the 1986 membership list. Subtracting the 46 names of the petitioner's members from the 176 unaccounted by 1996 would reduce the total to 130, or 38 percent, of the 1986 petitioner unaccounted for. The Department is not able to determine when these 46 were accepted into Smith River. Thus, it is unclear when some of these members may have been accepted into Smith River, or may have been dually enrolled. Further information on enrollment from the petitioner would clarify some of these estimates.

Thus, the petitioner lost at least one-third of its membership for reasons unrelated to decisions to join Smith River. In addition, the comparison of the petitioner's 1986 and 1996 lists reveals 94 continuing members, or 28 percent of the 1986 list and 58 percent of the 1996 list, with 42 percent of the 1996 list not previously recorded. The high turnover between the two lists over a ten year period suggests that the petitioner repeated the recruitment drive of the 1980s among an unstable membership who appeared to manifest little commitment or connection to the petitioner.

An examination of the petitioner's membership list from 2009 indicates a dwindling of membership between 1996 and 2009. A comparison of the two lists shows that both share 77 members. This number is 48 percent of the 1996 list and 88 percent of the 2009 list. Thus, the

Tolowa Nation (Petitioner #85) Proposed Finding

Summary of the Criteria - Criterion 83.7(b)

2009 list appears to reflect primarily a remnant of the membership represented by the 1996 list, with 12 percent who had not been on the earlier list.

A small number of non-rancheria Indians who enrolled with, or remained committed to, Petitioner #85 reported that they did so through relationships with families who had been present or former Petitioner #85 members. One interviewee, for example, recounted how she joined Petitioner #85. She had known Sheryl Bommelyn when she was in high school. They continued visiting, and later on, Bommelyn urged her to join, and she did. She noted, in addition, that they were second cousins (Crawford 2/12/2010). Another interviewee maintained she returned to her relatives in Del Norte County 30 years after living with another Indian tribe (Rubio 2/12/2010).

The interviewees cited mostly personal disputes among individuals and families (Hammonds 2/12/2010). The members did not base any differences on genealogical considerations. Members remain in close interaction with Smith River and Elk Valley, but are unable to join Elk Valley, and either unable or unwilling to join Smith River.

Other Social Interaction: 1983-2010

The revitalization activities cited earlier continued, but with increasing social distance from the rancherias. Appearing in the early 1990s were the Tolowa language and culture camps. Petitioner #85 maintains that, in some cases, members started these activities, only to have similar programs initiated by Smith River and Elk Valley Rancherias (Storr 2/10/2010). Petitioner #85 has maintained that some of the members who had been on the 1983 petitioner list, and who joined Smith River 1991-1996, have begun to exclude Petitioner #85 members from the ceremonial dances because of personal differences between families. They maintain that they have felt less welcome at some of the dances as a result. As one interviewee explained, “[n]ot so much barred from them . . . if you're not in a certain clique, or on their team, they make you feel very unwelcoming. They glared at you. It's really caused division” (Coney and Brooks 2/12/2010).

Petitioner #85 leaders have coordinated closely with the Smith River Rancheria to facilitate programs (Butler 6/26/1998). For example, the petitioner facilitated a grant from California Rural Indian Health Board, Inc., and offered its facilities at Guschu Hall to “house the Smith River Rancheria Head Start program on a temporary basis” (Melendez 7/17/1996). Petitioner #85 members also reported that they participated in various fundraisers and cultural programs at Elk Valley Rancheria, as well.

Conclusion

In general, Petitioner #85 has maintained that it represents a distinct community of Tolowa descendants that is broader than simply those who are today members of the Elk Valley and Smith River Rancherias. An examination of the evidence provided by Petitioner #85 and obtained by Department researchers does not support this assertion. The evidence shows that the petitioner fails to meet the criteria in § 83.7(b) for continuous distinct community from historical times until the present. In particular, Petitioner #85 has failed to provide evidence showing that there are consistent interactions and significant social relationship within its membership and that

Tolowa Nation (Petitioner #85) Proposed Finding

Summary of the Criteria - Criterion 83.7(b)

its members are differentiated from, and identified as distinct from, nonmembers. Community needs to be demonstrated historically as well as at present. In particular, the petitioner should submit evidence that:

- its present-day activities involve the broader membership on a consistent basis;
- explains the lack of stability in its membership;
- the membership of the petitioner's alleged precursor, DNIWA, consisted of an entity that constituted a community distinct from the membership of the rancherias; or
- the ancestors of the membership constituted a community distinct from the Elk Valley and Smith River Rancherias from the time of sustained contact in 1853, to the formation of the rancherias from 1903-1915.

First, evidence shows the present petitioner to be a group of activists whose main purpose is to promote the revitalization of their shared language and culture, facilitate the provision of educational and health services to Indians in Del Norte County, and provide consultation to government agencies, in order to protect cultural resources in Del Norte County. While they interact with leaders in the Smith River and Elk Valley Rancherias, evidence did not show that the rest of the petitioner membership is involved in these activities, maintains relations outside the formal structure, or that the petitioner is a distinct community from the Smith River and Elk Valley Rancherias.

Similarly, the petitioner maintains that informal social interaction and revitalization activities have continually been an important part of the petitioner's community interaction from the 1940s to the present. The petition narrative refers to numerous newspaper articles and reports on fund raisers, card parties, square dances, and other activities for the 1940s and 1950s. However, the petitioner provided none of these articles or reports, and there is little evidence showing how important or extensive these kinds of interaction were among the wider membership. These documents may provide important evidence because the narrative further maintains that these activities became more frequent and involved more Indians, after the Federal Government terminated their responsibilities toward the rancherias in the mid-1960s.

Second, a comparison of Petitioner #85's membership lists shows a high variability and turnover between 1986 and 1996, with the 2009 membership list reflecting a remnant of the 1996 membership. Such high variability or turnover is indicative of individuals or families recruited by the leadership from a population which has little other involvement in the petitioner's organization. This indication is further supported by interviewee accounts of the Federal acknowledgment process that began in 1983. It is also supported by the fact that very few individuals who were not on successive membership lists left to join Smith River Rancheria between 1991 and 1995, as some of the petitioner maintained.

Third, the evidence shows that many of the current petitioner's leadership, and their ancestors, were active in DNIWA, and that DNIWA's overall membership included both rancheria members and the petitioner's ancestors. The petitioner maintains that its organization evolved to represent a community that the petitioner also maintains existed from the early 1930s through the late 1960s, and which was an important part of a community including members of the Elk Valley and Smith River Rancherias, as well as petitioner's ancestors. Evidence fails to show if

Tolowa Nation (Petitioner #85) Proposed Finding

Summary of the Criteria - Criterion 83.7(b)

and how DNIWA functioned as a community that included a predominant portion of the petitioner's membership. The evidence also fails to show if and how this organization evolved into the present petitioner. In this regard, if there is only a recent differentiation, the petitioner would need to address issues raised in the Reconsidered Final Determination Eastern Pequot and Paucatuck Eastern Pequot, at 78-79 (2005). As indicated in the TA letter cited in the administrative history, it is important to know if and how the historical Tolowa divided into the petitioner and the Elk Valley and Smith River Rancherias, and how the petitioner is distinct from the rancherias and independent of their influence through history.

Evidence from the late 1930s shows that some of those individuals active in DNIWA came from families that had been enrolled on rancherias, but who had not obtained land. Other non-rancheria DNIWA members were descended from families that the petitioner maintains had already obtained land through means other than through the establishment of the rancherias. However, neither Petitioner #85 provided, nor did Department researchers find, evidence indicating the status of these other land holdings, or whether the land status provides evidence of being a distinct community. The Department researchers did not find evidence that these ancestors evolved as a separate community either from the membership of the Smith River and Elk Valley Rancherias, established 1906 and 1907 respectively, or from any other Tolowa entity that may have existed before 1907.

In sum, Petitioner #85 has failed to demonstrate that “[a] predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present.” The evidence does not show that the petitioner's ancestors existed as a community distinct from the ancestors of the Elk Valley and Smith River Rancherias from first sustained contact in 1853 to 1903, before the rancherias formed. The evidence fails to show that the petitioner's ancestors evolved as a distinct community from 1903 through the 1930s, after the rancherias formed, or later. DNIWA, claimed by the petitioner as its precursor, did not function as a distinct community from its alleged beginnings in the 1930s through the 1980s, when the Federal acknowledgment process began. Finally, the evidence does not show the petitioner's membership functioning as a community from 1980 to the present. Petitioner #85 thus fails to demonstrate that its members have connection with each other, outside of the organization itself, and does not meet the requirements of criterion 83.7(b), based upon the materials submitted by the petitioner and developed by Department researchers during active consideration of this petition.

Tolowa Nation (Petitioner #85) Proposed Finding

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Tolowa Nation (Petitioner #85) Proposed Finding

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